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ABSTRACT

Although geographically specific, this report is intended to serve as an educational resource for community, agency, and legislative personnel regarding the impacts created by revised legislation about children and the approaches used to improve the quality of justice for young people and their families. It is based on changes made in the juvenile delinquency dispositional statute in Alaska. The areas which were impacted by these changes, i.e., the juvenile justice system, the social services system, and miscellaneous children's legislation, are presented in a statute-by-statute format, with a statement of the law followed by an examination of change, legislative intent, extent of and problems with implementation, and general impact analysis of the subsequent changes. The appendices contain statistics on juvenile delinquents, legislative materials, forms used by social services workers, and project report data. (Author/HLM)

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A REPORT ON THE IMPACTS OF THE AUGUST, 1977 CHANGES IN THE CHILDREN'S CODE CONCERNING THE HANDLING OF CHILDREN'S MATTERS IN ANCHORAGE.

May, 1979

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INTRODUCTION

Alaska Youth Advocates, Inc. was incorporated in 1972 and has since that date, been concerned about the issues and problems of juvenile justice in Alaska. AYA's interest in researching this project is the outgrowth of a considerable amount of hard work by the Children's Code Revision Task Force. The Task Force's effort eventually brought about in August, 1977, many significant statutory amendments in Alaska laws affecting children. While some viewed these amendments as being extremely progressive and constituting a major breakthrough in juvenile legislation, all those on the Task Force realized that there would be a period of adjustment during the implementation of the new statutes.

With this in mind, AYA undertook this Children's Code research project in order to:

1) Examine the specific changes in the Children's Code made August, 1977.

2) Describe the legislative intent behind each particular change. This legislative intent is not to be interpreted as the Legislature's official legal basis for passing each statute.

3) Survey key court, probation, police, social services and correctional facility personnel to identify the extent to which changes have been implemented.

4) Present the general impacts that individual changes in laws affecting children have had during the first year's experience with them.

5) Specify problem areas in certain statutes that may need to be addressed through agency policy decisions or further legislative action.

6) Make recommendations to the Governor's Commission on the Administration of Justice.

7) Further the communication between juvenile justice personnel, youth agency personnel, children, families and members of general public with regard to the changes in the Children's Code.

This report is intended to serve as a resource for community, agency, and legislative education regarding the impacts created by the revised children's legislation. It is also hoped that the recommendations in this report will encourage innovative approaches to improve the quality of justice for young people and their families throughout Alaska.

It should be noted that through the body of this report the male pronoun is used to indicate both sexes.

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Juvenile Justice Background Information:

In order to better understand changes that were made in the juvenile delinquency dispositional statute, it is helpful to first discuss how the juvenile justice system operates in Anchorage. The authority for bringing juveniles to justice came from Title 47 of the Alaska Statutes and from the Alaska Supreme Court's Rules of Children's Procedure. When these two sources of authority are in apparent conflict, the Children's Rules always take precedence, unless the Legislature passed a specific statute to overrule a particular rule.

In Alaska, juvenile justice is a primary responsibility of the Superior Court; however, it is often carried out to varying degrees by District Court Judges, Magistrates and Court Masters. In Anchorage, many of the Superior Court's duties are delegated to the appointed Children's Court Master. The Master conducts all delinquency proceedings and hearings except those involving death, serious violence, or waiver to adult court. If a juvenile requests a jury trial at the adjudication stage, the proceeding will be handled by the Superior Court Judge presiding over the Children's Court. At the conclusion of most proceedings, the Master prepares a report of his findings and recommendations and submits this report along with any proposed orders to the presiding Superior Court Judge.

Usually, juveniles accused of crimes are first investigated by the Anchorage Police or the State Troopers. For them to make a valid arrest, a violation of a law or ordinance must occur in the presence of an officer or the officer must reasonably believe the minor to be a fugitive from justice. A peace officer may also continue a lawful arrest made by a citizen. A case involving a juvenile's arrest may require that the juvenile be placed in temporary detention pursuant to AS 47.10.140. A peace officer can have a minor detained at the McLaughlin Youth Center's detention unit if the officer reasonably believes that it is necessary to do so to protect the minor or the community, or there is no assurance that the minor will be available for subsequent court proceedings. This is usually the case when there is no responsible adult to whom to release the minor. The peace officer has a duty to notify the court, the minor's parents, and the Department of Health and Social Services within 12 hours of his action. The Court and the Department through McLaughlin as its agent, are notified when they receive their copy of the McLaughlin detention admission form.

In most cases, if minors are detained in McLaughlin overnight during the week, a Court Intake officer will go to McLaughlin early the following morning to review the new detention cases. Sometimes this type of review is done over the telephone.

The Anchorage Court Intake office has the primary responsibility for screening all juvenile cases for the court. It conducts a preliminary investigation of any juvenile suspected of committing a crime to determine if there are sufficient facts to require further action. This almost always involves an intake interview with the minor and his parents.

Where a minor has been placed in temporary detention by a peace officer, sometimes a Court Intake officer may discontinue the detention after reviewing the case. If detention continues, the court must hold a detention hearing within 48 hours after a minor has been taken into custody. When continued detention of a minor is found to be necessary, the court must establish that there is probable cause to believe that the minor is delinquent. Detention can only be continued under court order and only for a maximum of 30 days. For a minor to be held longer than 30 days in detention awaiting disposition, a hearing must be held to determine the need for continued detention.

A Court Intake officer determines whether a minor's case should be handled informally or whether a formal petition of delinquency should be filed with the court. Once a petition has been filed on a minor, the court will arraign the minor on the petition at a hearing. The minor is advised of all of his rights and is afforded the right to counsel. The public defender's services are made available if the minor's family is indigent.

If the minor admits to the petition at the arraignment, then this proceeding now becomes the adjudicative hearing. If the minor denies the petition, an adjudicative hearing is scheduled in which the Court Intake office working with the District Attorney's office, will attempt to prove beyond a reasonable doubt that the minor is delinquent.

The Court Intake office's responsibilities usually continue right up to the dispositional hearing. A minor in detention at the time of the adjudication can be released from custody pending the dispositional hearing. In these cases, there is a responsible person to release the minor to, there appears to be no reason to warrant continued detention, and the minor agrees to abide by certain conditions of conduct pending his case's disposition.

The court in most cases orders a predisposition report to be prepared by an officer of the Anchorage Probation office for any juvenile that is adjudicated delinquent. A probation officer assigned to the minor's case will review the Court Intake file and then investigate the minor's home, work and school environments. This will include interviews with both the minor and the minor's parents. In an attempt to fully present to the court a full description of the minor's current mental, physical, and emotional status, a probation officer's report includes relevant medical information, a history of the minor's involvement with other agencies, and oftentimes a psychological evaluation. When necessary, information will be presented for resitution purposes on the amount of damage or loss caused by the minor's delinquent action. The investigation is eventually formulated into a written report to the court with recommendations for disposition of the minor's case. Statute requires that the report be available to the minor, the parents, the attorney and the court 10 days prior to the dispositional hearing.

At the dispositional hearing, the Children's Court Master will review the predisposition report and hear testimony on the advantages and disadvantages of particular disposition choices such as probation or institutionalization. The court will also review the psychological evaluation of the minor which either the Court Intake office or the Children's Court Master ordered. This evaluation is usually performed by a professional psychologist or psychiatrist under contract to the McLaughlin Youth Center. The court can give this evaluation a fair amount of weight in making its findings and dispositional recommendations. The court will also consider the minor's detention record as submitted by McLaughlin. This report summarizes the minor's behavior while in detention and states any progress the minor may have made.

Based upon the predisposition report, the psychological evaluation, the detention report and any other pertinent testimony, the Children's Court Master will make his findings of fact and recommend a disposition in the case. The Master will propose a dispositional order which is given to the parent, guardian or custodian of the minor. Within seven days after being served with the Master's written notice, any of the parties may apply to the Superior Court for, and shall be allowed, a hearing by a judge on the disposition of the minor's case.

The Division of Corrections' Probation office in Anchorage supervises all dispositional orders for probation. Likewise, if a minor is committed to the state's custody and placed on probation in the court's order, the Probation office will, at its discretion, determine whether the minor should go home or which facility (group home, foster home) is the most appropriate placement for the minor. If a minor violates the conditions of a probation order, the violation will usually come immediately to the attention of the youth's probation officer. Taking into account the seriousness of the violation, the probation officer decides whether or not to file a probation revocation and modification of court order petition. The petition is often utilized when the probation officer determines that the minor should be on probation in state custody, under a deferred institutional order, or institutionalized. If the violation of probation is not that serious, effort is directed towards a new court order for probation with custody. The probation department must have custody of a minor in in order to provide state paid services other than supervision (i.e. foster care, group home placement, etc.) unless the court orders diagnostic work.

If a minor under a probation order is not reporting to the probation officer, the officer might file a petition for a modification of the court's order. Though the youth's probation is not being revoked, the same petition is filed to modify the current probation. Usually the court subpoena's the minor and his or her parents so that it can clarify and reinforce the conditions of the youth's probation order. There are a variety of situations in which a petition will be filed simply to modify the court's order. Another example would be when it is determined that a minor has fully satisfied the conditions of a probation order and no longer requires state supervision.

When a petition is filed to revoke a minor's probation, the minor has the right to an adjudicative and dispositional hearing. However, there is no right in the State of Alaska to a jury trial and the minor's violation of probation need only be proved by a preponderance of the evidence.

Sometimes a minor already under a probation order will commit a new delinquent offense. In these cases, the Court Intake office would make an investigation and decide whether or not to file a new petition for delinquency.

In cases where the court has issued an order for institutionalization, the Division of Corrections utilizes a regional classification board to determine what institutional facility is most appropriate for the minor's treatment needs. The southcentral classification committee is made up of representatives from the Anchorage Probation office and the McLaughlin Youth Center. The committee holds hearings within 5-10 calendar days after the court issues an order forinstitutionalization. There is a minimum five day delay because of the five day notice required to be given to the minor and the parents. As a general rule a minor who is placed under an institutional order during the week, will go to a classification hearing on the following Wednesday. At this hearing the committee will review the minor's case and listen to the views of all interested parties before deciding whether to place the minor in McLaughlin, Turning Point Boys Ranch in Willow, Alaska, or in a facility outside the state. In Anchorage, a minor who is under an institutional order always waits in the McLaughlin detention unit until classified and placed in an institutional facility. Delinquent minors may appeal a classification decision to the Superintendent of Corrections and can be represented at the classification hearing by their attorney of record.

Statute 47.10.010(a)(1)

As amended: (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as other wise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or

Examination of Change:

Previously this section of the statute gave the court jurisdiction in delinquency proceedings over minors who violated a law of the state, or an ordinance or regulation of a political subdivision of the state. The new section limits delinquency jurisdiction to cases where a minor has violated a criminal law of the state or of a municipality of the state.

Legislative Intent:

This statute was amended to make more specific the violations of state or municipal laws for which the court can consider delinquency jurisdiction.

Extent to Which Change Implemented:

There does not appear to be any real impact that has resulted from this change. It does coincide with the amendment requiring the handling of Fish and Game, and Parks and Recreation regulation violations in District Court (except if a felony).

Specific Problems with Implementation:

It has been suggested that ordinances or laws of smaller bush villages that cannot be considered a municipality of the state, may have a problem trying to bring a delinquency petition on a violation of one of their own laws (curfew). However, it is not clear that this is in fact the case.

Statute 47.10.050(a) and (b)

As amended: APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY. (a) Whenever in the course of proceedings instituted under this chapter it appears to the court that the welfare of a minor will be promoted by the appointment of an attorney to represent the minor or an attorney or other person to serve as guardian ad litem, the court may make the appointment. Appointment of a guardian ad litem or attorney shall be made under the terms of AS 09.65.130.

(b) In all proceedings initiated under a petition for delinquency, a minor shall have the right to be represented by counsel and if indigent have counsel appointed for him by the court. The court shall appoint counsel in such cases unless it makes a finding on the record that the minor has made a voluntary, knowing, and intelligent waiver of the right to counsel and a parent or guardian with whom the child resides or resided before the filing of the petition concurs with the waiver. In cases in which it has been alleged that the minor has committed an act which would be a felony if he were an adult, waiver of counsel shall not be accepted unless the court is satisfied that the minor has consulted with an attorney before his waiver of counsel.

Examination of Change:

The major changes in this statute involved the creation of a separate subsection (a) to allow for the appointment by the court of an attorney to represent the minor or an attorney or other person to serve as guardian ad litem. This part of the statute is substantially the same as it was before except for the new authority of the court to appoint someone other than an attorney as a guardian ad litem pursuant to 9.65.130.

The second and more significant change was the creation of a subsection (b) which states thatin all delinquency proceedings, a minor shall have the right to be represented by counsel and if indigent have counsel appointed for him by the court. The statute reemphasizes the court's reponsibilities under Children's Rules 14 and 15 by stating that the court must appoint an attorney for a minor unless it finds that the minor has made a voluntary, knowing and intelligent waiver of the right to counsel and that the parents or guardian concur.

Finally, the statute adds to the responsibilities of the court the requirement it must assure a minor who is accused of committing a felony has consulted with an attorney before the court can consider the minor's desire to waive counsel.

Legislative Intent:

In making this statutory change, the Children's Code Task Force found it desireable to assert the right to counsel for minors charged with delinquent acts. Although the Rules of Children's procedure had already provided for most of these court responsibilities, the new requirement for consultation with attorneys if a minor is accused of a felony has had some impact on the juvenile justice process.

According to one Children's Code Task Force memo, this change was made because of a concern for juveniles becoming intimidated by the court proceedings and to assure that a juvenile's procedural and substantive rights are not violated.

Extent to Which Change Implemented:

This change has been implemented in the Anchorage Court Intake office by informing a minor accused of a felony (and the minor's parents) of the need for the minor to talk to an attorney. When the parents can afford an attorney, they are told to secure a private attorney to consult with the minor about the charges. If because of the extended length of the proceedings or because of the parents dire financial situation, it appears to the Court Intake office that they cannot afford a private attorney, then the public defender is made available to consult with the minor. When there is a reasonable doubt as to whether the minor does qualify for the public defender, the minor and his parents are sent to Pre-Trial Services where they will be formally screened to determine if they qualify for a public defender.

The change has also been implemented by the Public Defender's office and the Children's Court Master. The public defender who handles juvenile matters has been meeting individually with indigent minors at the court building when a minor held in detention at McLaughlin Youth Center is transported to the Court Intake office, and when a minor released to his parents comes in to meet informally with a Court Intake officer. The Children's Court Master is also making a finding, on the record at the arraignment of a juvenile charged with a felony, that the parents and the minor have represented to the court and the court is satisfied that the minor has consulted with an attorney. The Master makes sure a juvenile who decides to waive his right to counsel has talked with an attorney and knows the consequences of waiving his right to counsel. If it appears that the minor has not seen an attorney, the Children's Court Master instructs the parents and minor as to the alternatives of a public defender or private attorney depending upon their financial situation, and will hold the arraignment proceeding in obeyance until after the minor has talked to an attorney.

General Impacts of Change:

A. Court Intake:

The requirement that a minor accused of a felony consult with an attorney before being able to waive his right to an attorney has had a very limited impact on the juvenile court intake process. When a juvenile first meets with a Court Intake officer for preliminary interview, the juvenile as a matter of practice is always informed of the right to have an attorney present. The majority of juveniles decline to have an attorney present. For the few who express a desire to have an attorney, at this stage in the proceedings, the interview is terminated and they are put in touch with the public defender if they are deemed to be indigent. Otherwise, they have to obtain a private attorney by contacting someone they know or go through the Alaska Bar Association referral system.

B. Public Defender:

The impact of this change in the statute may have had an effect on the number of juveniles who are being represented by the public defender. Prior to the new requirement for consultation with an attorney if a minor is accused of a felony, minors were always informed of their right to have an attorney appointed when not able to afford one. If there was any doubt, the juvenile usually saw the public defender. Approximately one-third of the juveniles who saw the public defender in the year and a half before the change was made, actually decided to waive their right to counsel after discussing things with him. At that time the public defender viewed his role as a "watch dog" to guarantee that the minor's rights were observed and the disposition reasonable. It was also felt that the juveniles might gain from having an adult represent them and it might also have furthered the juveniles' respect for the justice process.

While much of this commentary is a subjective opinion on the role of the public defender, it is interesting to note that the present public defender sees his role very much the same as his predecessor. Additionally, the public defender who handles delinquency matters sees his impact in terms of bringing an organized theme to the information about the juvenile to the court and limiting the bad information that gets into court. Not surprisingly very few minors now waive their right to a public defender. From this, one might reasonably conclude that because of the change in the statute, the public defender is representing more juveniles accused of felonies and fewer waivers are being made.

Specific Problems with Implementation:

1) There is some concern over the felony-misdemeanor distinction in this statute not having the same meaning as it does for adults. In the juvenile dispositional alternatives, both offenses can only receive an initial court ordered disposition of no greater than two years. A juvenile does not necessary face more severe consequences because his offense was a felony rather than a misdeameanor. According to Court Intake officers, it is not unusual for the court to be dealing with a more hardened and serious misdemeanant who requires more confined treatment than a first time juvenile felony offender.

Generally, the cases that have petitions for delinquency filed on them are typically either very serious crimes, moderately serious crimes with alot of evidence or cases involving a recidivist who continues to exhibit little responsibility for his actions.

2) A second concern has been expressed about the impact of the requirement for consultation with an attorney on the parents of a minor who cannot qualify for the public defender and yet do not have the financial resources to spend on a private attorney. Obviously these borderline families find it difficult to afford even a private attorney's short consultation fees. There may be a certain percentage of families for which this requirement is unfair and harsh. However, the Alaska Bar Association referral service does provide the names of those attorneys who are willing to provide one half hour of legal consultation for a flat fee of $25. It is important that a juvenile and his parents be made aware of this resource. It will be of limited assistance if these attorneys are unwilling to go to McLaughlin to see the minor.

3) One of the problems created by making the consultation with an attorney mandatory for certain offenses is that of unequal juvenile representation in the juvenile delinquency proceedings. The minors who benefit from the requirement are those whose families are clearly indigent, those whose families can easily afford a private attorney, and those whose victims actually were their families (their sole financial situation is considered for the public defender). There seems to be a consensus that an attorney can be effective at a temporary detention hearing, after the adjudication hearing in deciding the issue of whether a minor should be detained pending disposition, and at the dispositional hearing to aid the court in making a reasonable disposition. These minors whose families are just above the level of qualifying for the public defender are the most underrepresented class of juvenile offenders.

Statute 47.10.081(a)

As amended: PREDISPOSITION HEARING REPORTS. (a) Before the disposition hearing of a delinquent minor, the department shall submit a predisposition report with a recommended plan of treatment to aid the court in its selection of a disposition, and any further information which the court may request.

Examination of Change:

This statute requires the Department to submit a predisposition report with a recommended plan of treatment to the court prior to the disposition hearing of a delinquent minor. A juvenile probation officer of the Division of Corrections' Anchorage Probation office prepares this report and also helps to supply any other information which the court may request for the disposition.

Legislative Intent:

The intent of this statute was to give statutory authority to what was already the practice in Anchorage delinquency proceedings and to make this the uniform procedure around the state. This statute makes it possible for the court to develop a more informal dispositional order or to continue a case until it receives further information.

Extent to Which Change Implemented:

While the predisposition report was always utilized in Anchorage before the Children's Code was changed, it is also accurate to say that in other parts of the state, juveniles were often going into their disposition hearing without the court having the benefit of a report, plan or well thought out recommendation for the disposition. This statute was created to make it mandatory that a predisposition report be prepared.

Presently, a predisposition report is prepared by a juvenile probation officer for each juvenile who is awaiting a dispositional hearing. The probation officer communicates with the juvenile, the juvenile's parents, school and employment people, the victim, and anyone else who might give some additional insight into the juvenile's character and behavior, and the loss or damage suffered as a result of the offense. The report includes additional information from psychological, psychiatric, or medical work that may have been performed with the juvenile. Psychological evaluations ordered by the court for some youth usually confirm certain conclusions which the probation officer has already reached. This information is compiled into an investigation report which reaches certain findings and makes recommendations to the court for the juvenile's disposition. The recommendation is usually either probation, placement with the Department, or placement and probation, and can include a dollar amount of restitution or a certain number of hours of community service.

General Impacts of Change:

The impacts of the new statute have not been substantial in Anchorage where the predisposition report was already in use. However, the new statute may help to change the nature of the reports that are prepared by probation officers. It appears that the requirement of a plan of treatment has not really been interpreted as a specific treatment oriented plan. Rather the plan proposed by a probation officer usually suggests that the probation officer will generally supervise the juvenile during the probation period.

It appears that the new Children's Court Master is requiring more in a particular treatment plan depending upon whether the juvenile is to be left in the home or actually placed in state custody. The Master is inquiring into the actual frequency in which the probation officer will see the juvenile. For the most part a written treatment plan will only address the level of supervision by the probation officer while the real treatment objectives remain unwritten by the probation officer.

Specific Problems with Implementation:

The implementation of this statute has not brought any major problems in Anchorage. Nevertheless, the nature of the proposed treatment plan in a predisposition report may allow the court and the probation office to look at some areas of physical and mental behavior in a juvenile which are not now investigated thoroughly. The treatment plan for a particular juvenile could include testing for hypoglycemia caused by blood sugar irregularities, blood tests for anemia and psychological tests for learning disabilities. All of these conditions have been the subject of considerable research and some evidence exists to show their close association to juvenile delinquent behavior.

Though the court will probably order any kind of test that the probation officer recommended, as a practical matter these tests are very seldom administered or even included in a predisposition report because of strict budgetary constraints. The Anchorage Probation office would have to have additional state funds made available to it in order to provide for these types of tests. Presently, these tests are left to the individual parents to pay for. In one such case, a mother was very concerned about her hyperactive son being held in detention at the McLaughlin Youth Center. She believed a large portion of his delinquent behavior could be traced to a hypoglycemic condition he had had since childhood. She was making efforts to have a doctor administer a glucose tolerance test to him.

There are no statistics for the percentage of Alaskan juvenile offenders who suffer from hypoglycemia or learning disabilities but it appears that much more needs to be done in this area to make testing for these conditions a realistic part of a treatment plan.

If additional funds are not made available for testing, then another approach would be to increase the amount of staff training in these areas for probation officers. This would give probation officers current information from other professionals working with hypoglycemic or learning disabled youth. If a probation officer is better able to recognize these conditions and their effects on a juvenile, then he or she can develop an appropriate treatment plan.

Statute 47.10.081(c)

As amended: (c) The court shall inform the child, his parents and the attorneys representing the parties and the guardian ad litem that the predisposition report will be available to them not less than 10 days before the disposition hearing.

Examination of Change:

This new subsection requires the court to notify the minor, his parents and the attorneys that the predisposition report will be available to them not less than 10 days before the disposition hearing.

Legislative Intent: The intent of this change was to ensure that the persons involved with the juvenile's case will know the Department's plans and thus become more involved with the juvenile's treatment. Because of the 10 day requirement, it was thought that the adjudication and disposition hearings would always be separate proceedings.

Extent to Which Change Implemented:

This 10 day requirement has proved to be totally unworkable in the majority of reports that Anchorage probation officers have had to prepare. The major reason is the lack of adequate time to prepare an accurate report between the arrival of the juvenile's file from the Court Intake office and the submission of the final report to the probation office secretary for typing.

Usually, after a juvenile is arraigned on a delinquency charge in Children's Court, the Court Intake office sends the juvenile's file to the probation office. If the juvenile is kept in detention at the McLaughlin Youth Center the court must hold the dispositional hearing within 30 days. This means that the predisposition report must be completed within that 30 days.

In a typical situation, the probation office may get the juvenile's file the day after the juvenile's arraignment. The file is assigned to the appropriate probation officer who receives it the next day. The probation officer in adhering to the requirement of having the report available 10 days prior to the disposition hearing, would have only 6 to 9 working days in which to complete it.

For Anchorage probation officers this does not allow them enough time to produce a viable report and also carry out their supervision responsibilities for other juveniles on probation. To investigate the background of a youth for the predisposition report, the probation officer makes appointments to talk with the parents, interviews the youth (either at home, in the probation office or in McLaughlin, if the youth is in detention) and talks with school personnel and others who may have valuable insights into the juvenile's behavior.

This predisposition investigation must be fit into a schedule that includes court referrals, court appearances, supervision of juveniles on probation, holidays and other time commitments. In order to allow for a proper amount of observation time during the predisposition period, to minimize mistaken perceptions of a youth and the parents' attitude towards the youth, Anchorage probation officers are making every effort to have their reports prepared for typing one week before the disposition hearing.

Consequently, predisposition reports have rarely been available to the youth, the parents or attorneys until 2 or 3 days before the hearing. In some cases the report may not be available until the day of the hearing.

General Impacts of Change:

The 10 day requirement for predisposition reports has had little impact on Anchorage probation officers. The past practice, before this statute was enacted, was to have the report available 2 to 3 days before the disposition hearing. The new 10 day requirement probably has made the probation officers more aware of the need to have these reports prepared early enough to allow the parties a sufficient opportunity for review prior to the disposition hearing.

But even with the most efficient management of time, probation officers cannot, without additional resources, comply with the 10 day requirement. It has been suggested that the statute should be revised to require a 5 or possibly even a 3 day time limit for the availability of predisposition reports. Presently in Anchorage, the Division of Corrections is notifying a juvenile's parents that they can come down to the probation office to discuss the predisposition report several days prior to the disposition hearing. Copies of the predisposition report are being made available to the court and to a juvenile being held in McLaughlin. When the court receives its copy, it is also notified of the results (review or refusal to review) of making the report available to the parents, the juvenile and the attorney.

Currently, the parents of a juvenile awaiting disposition, the juvenile and the attorney can waive the 10 day availability requirement. Most are doing so for 5,6, or possibly 7 of the ten days. The juvenile or the parents must get access to the psychological or psychiatric evaluations through the court and cannot obtain that information directly from the Probation office for confidentiality reasons.

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Special Problems with Implementation:

The most difficult problems encountered in applying the 10 day requirement surface when a predisposition report has to be prepared for a juvenile in detention. Because a juvenile can only be held in detention a maximum of 30 days between the adjudication and disposition hearings, a probation officer has a limited amount of time in which to prepare the report.

In cases where a predisposition report is ordered for a juvenile released to parents, a probation officer has more flexibility. If more time is needed for investigation, the probation officer can contact the Court Intake office, which handles the calendaring of delinquency proceedings on Tuesdays and Thursdays of each week. The Court Intake office can reschedule the disposition hearing for a later date. This is much more difficult to do when a juvenile is being held in detention. One approach to the problem might be to give the probation office additional financial and personnel resources to respond more effectively in the predisposition investigation of juveniles in detention.

Concern has been expressed that the present court orders to continue detention pending a juvenile's disposition hearing are generally for the 30 day maximum. Most minors awaiting disposition remain in McLaughlin for a full 30 days. It appears that after a week or two weeks in detention, a minor is doing nothing but "dead time" that perhaps has little or no positive value. However, because the full predisposition report generally takes the maximum amount of time to complete, minors under a 30 day detention order have no opportunity to be released from detention or placed in an appropriate treatment program. During this "dead time," a juvenile might be losing a job he had prior to his delinquent act or be held out of the school he regularly attended which make him more dependent on institutional support. Both of these impacts can be quite significant on a juvenile and further lower his self-esteem.

A process could be developed to enable a probation officer to present preliminary findings to the court regarding the appropriateness of continued detention of a juvenile beyond the initial two weeks. This would provide some flexibility to the system of detaining juveniles and could allow juveniles who are evaluated as no longer being a danger to themselves or the community, to be released to their home and/or to a treatment program in the community.

Even though predisposition reports are not regularly available several days before a disposition hearing, a party or attorney who desires more time to review the report can ask for a continuance of the hearing for a specific period of time. This has rarely been requested. Part of the reason for this is the fact that a more cooperative attitude is being expressed by the court regarding communications between a probation officer investigating a youth and the youth's attorney. The attorney can very often get some ideas of what the probation officer's recommendations will be prior to the drafting of the predisposition report.

One further problem with the implementation of this statute is the fact that in some cases the court may hold both the adjudication and the disposition hearings at one time. The court will do this under the authority granted it by Children's Rule 22 which allows for immediate court order. These orders may be made without the benefit of a predisposition report sometimes because a juvenile has just had a disposition hearing 3-4 weeks eariler and the court may need to establish a basis for restitution on a related prior offense.

Statute 47.10.080(b)(1)

As amended: (b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Social Services for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility which the department considers appropraite and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under sec. 200 of this chapter;

Examination of Change:

This subsection was changed in several significant ways. First, a court order committing a minor to the Department of Health and Social Services can no longer be made for more than a two year period of time. The previous statute allowed the court to issue placement orders in delinquency proceedings for an indeterminate period of time not to exceed the child's 19th birthday. The revised statute still limits dispositional orders so that in no case can they extend past a minor's 19th birthday.

A second change in the statute requires that DH&SS petition the court for two year extensions of commitment orders not to extend past a child's 19th birthday if it deems continued custody and treatment necessary. The court may grant the extension after a hearing in which it finds the extension to be in the best interests of the minor and the public.

The third change in the statute allows the court to grant, after a hearing, an additional one year of supervision from age 19 to 20 if found to be in the best interests of the person, and the person consents. The previous statute allowed the court to grant this additional year based solely on a petition by DH&SS for a young person who has not responded to treatment.

DH&SS still retains the overall authority to place a minor, under a delinquency commitment order, in an appropriate juvenile facility. A classification committee within DH&SS exercises this discretion.

Legislative Intent:

The intent behind these changes was to place the burden on DH&SS to show the need to have a youth under its control beyond the initial two year period. It was thought that the previous statute tended to encourage the warehousing of youth committed to the state's custody and it was found that the indefinite commitment periods made it possible for some delinquents to be committed to the state for a much longer period than could adults for the same offenses. The changes were also intended to force DH&SS to address the problems of youth under its care as soon as possible and to eliminate any unnecessary and extremely expensive state custody.

Extent to Which Change Implemented:

A. Two Year Maximum Order:

This subsection of the amended dispositional statute has been implemented in the Anchorage Court and the court's orders now read that a minor is to be placed in the custody of DH&SS for an indeterminate period of time not to exceed two years or the minor's 19th birthday.

B. Two Year Extensions:

Because the revised statute has not yet been in effect for two years, there have been no cases where DH&SS has sought an additional two year extension of the court's order. The first application for an extension might be expected sometime in August of 1979.

C. Additional One Year with Consent:

There have been one or two cases where this subsection has actually been applied. However, in the case of waiver hearings, the Alaska Supreme Court has ruled that the Superior Court cannot consider a juvenile's consent to an additional year from age 19 to 20, in determining whether to waive jurisdiction (see discussion of 47.10.60).

General Impacts of Change:

Two Year Maximum Order:

There is general agreement that the two year maximum limit on court orders has not had, up to this point in time, a significant impact on the Division of Corrections or the court system. The main reasons given to explain the lack of impact are that the institutional treatment programs utilized by DOC are geared to shorter periods of time than two years, and that it is rare that a juvenile under an institutional order needs a treatment program longer than two years in duration.

The two primary treatment programs for institutionalized juveniles in Alaska are the McLaughlin Youth Center in Anchorage and the Turning Point Boys Ranch in Willow. The State Department of Health and Social Services through its Division of Corrections contracts with these facilities to provide institutional care and treatment for juveniles placed in each facility.

Based upon a review of McLaughlin's treatment program statistics for 1978, the average period of time a juvenile spends in treatment (in a cottage or the closed treatment unit) at McLaughlin is 14 months. There were a total of 62 males that completed the treatment program in an average of 13.8 months. For the year, a total of 18 females completed the treatment program in an average of 15 months. There were 6 additional juveniles who entered treatment during the year but who did not complete the treatment program. One male after nine months of treatment was transferred to the Alaska Psychiatric Institute. Another male after six months of treatment was reclassified to the Turning Point Boys Ranch. A third male after five months of treatment was reclassified internally from McLaughlin's cottage program to its closed treatment unit. The remaining three juveniles were males that were released as the result of court review hearings after one, four, and four months of treatment. The average amount of time a juvenile spends in treatment does not include the time a juvenile spends in detention awaiting an adjudication hearing, a disposition hearing, a classification hearing, or an opening in the treatment program. It cost approximately $81.99 per day in 1978 to have a juvenile in a McLaughlin treatment program. A juvenile normally remains in the cottage or closed treatment unit program until it is determined by the clinical staff that treatment is no longer necessary.

Though statistical information was not obtained, it has been suggested that the treatment program offered at the Turning Point Boys Ranch averages around two years in duration. The treatment programs in out-of-state facilities are usually of a shorter nature. It seems, therefore, that the two year limit on court orders has not seriously affected the use of in-state and out-of-state secured treatment facilities.

Some concern has been expressed by Court Intake officials over the fact that a juvenile who commits a very serious offense such as murder, initially is only faced with a maximum of two years treatment. Depending upon the age of the juvenile and his amenability to treatment, DOC has the option at the end of two years to petition the court for an extension of the institutional order. It is not clear from the statute what DOC must establish in a court hearing in order to receive an extension of the court's order for an additional two years. Court Intake officials fear that this DOC responsibility will not be easy to carry out.

Two Year Extensions and Additional One Year with Consent:

These changes in the statute have not yet had much of an impact, although they do raise several potential problems that will have to be dealt with by DOC and the court system.

Specific Problems with Implementation:

1) The subsection of the new statute that requires DH&SS to petition the court for an extension of a commitment order for a juvenile may create some problems starting in July and August of 1979. Similarly for youths under child in need of aid or old dependency court orders, the court will have to anticipate and plan for hearings on petitions by DH&SS to retain custody over juveniles under institutional orders.

Though the majority of juveniles under an institutional order (order of commitment to DH&SS) are released from state custody in less than two years, there will be a certain percentage of cases where DH&SS may think it necessary to continue to keep a juvenile in state custody for further treatment even though the maximum two year period of the court's order is about to lapse.

The new subsection clearly calls for a hearing on the matter, but it does not explain what the court will require DH&SS to establish about a juvenile before it will grant an extension of state custody.

This process will require DOC and the court to develop a petition for the extension of a court order, give notice to the juvenile, the parents and other appropriate parties, make legal representation available to juveniles who can qualify for it, and schedule the extension hearings into the court's calendar of proceedings. The court will have to devote resources to scheduling and holding these hearings for juveniles in institutional, group homes, and foster care placements under the old statute's indeterminate orders and under the August, 1977 revised two year maximum court orders.

One suggestion has been made that the court's institutional order in new cases could be supplemented with a second page that would allow the juvenile and his parents to stipulate (agree to) to continued custody after an initial two year period of state custody. The juvenile would have to be fully informed of his legal rights and all of the possible alternatives before this kind of stipulation could be implemented. Even under these circumstances, a stipulated agreement could only be reached after a hearing before the court. While it may facilitate the processing of certain delinquent juveniles by the court beyond the original two year commitment to state custody, it may also encourage the dependence of these juveniles upon state provided institutional care. Several people have pointed out that some minors actually want to stay in state custody because they do not have to take responsibility for themselves. As long as the state is paying for and supplying medical care, shelter, food, and a small socially supportive environment for these juveniles, some of them will prefer their placement to the larger more demanding environment outside the institution.

2) Whether the Children's Court Master decides to recommend an institutional order in the disposition of a particular juvenile's case depends upon several factors. Generally, an institutional order is only recommended when a juvenile has a long history of delinquent behavior, and/or when the offense committed involved serious danger (i.e. armed robbery). The Master must conclude that unless the juvenile is placed in an institution, similar anti-social conduct by the minor will continue to occur and that treatment, correction, and rehabilitation cannot otherwise be achieved.

In considering whether to recommend an institutional order, the Master will listen to the probation officer at the disposition hearing and review carefully any recommendations in the predisposition report. A probation officer has a number of recommendations he can make to the court for a juvenile's disposition. The Children's Court Master or the Judge (as the case may be) can follow that recommendation in his order or make a different determination.

The alternative recommendations are:

a) He can recommend no disposition (dismissal).
b) He can recommend probation without state (DH&SS) custody (the minor usually remains at home).
c) He can recommend probation with state custody;
    i. the minor may be placed on probation in a residential setting contracted for by the state (i.e. Alaska Children's Services Homes, Jesse Lee Home or Booth Memorial Home),
    ii. the minor may be placed on probation in a foster home licensed by the state (there are approximately 14-18 Division of Corrections foster homes in the Anchorage area),
    iii. The minor may be placed on probation in a more structured residential environment contracted for by the state (Hilltop Group Home).
d) He can recommend deferred institutionalization which would delay institutionalization for anywhere from 30 to 120 days. (This will be discussed in a subsequent section.)
e) He can recommend institutionalization.

Generally, an individual probation officer has the authority to recommend to the court one of these dispositional alternatives. A probation officer's recommendation is reviewed by the staff supervisor before being made final. If the court supports a recommendation for probation with state custody, the probation officer will subsequently choose the appropriate placement. In cases where a foster home is the preferred disposition, the probation officer will work with DOC's foster home coordinator to make certain the home is licensed by the state. These homes are sometimes those of individuals who are either friends or relatives of the delinquent minor. If the need should arise to transfer a minor out of a foster home, the probation officer has the authority to approve that move.

If a minor is deemed appropriate for the Hilltop Group Home, his placement there requires a majority vote of the entire Anchorage Probation staff. This is done because Hilltop has a limited capacity and it is intended to give a youth who might have been institutionalized one last chance to remain on probation in the Anchorage community.

One of the most critical factors in any DOC placement (institutional or probational) is the actual cost to the state for the placement. Average projected FY 1979 costs of some of the in-state and out-of-state facilities commonly utilized are as follows:

		1978	1979
In-State:			
	Booth Memorial Home (girls)	75.63/day	92.26/day
	Jesse Lee Home	75.43/day	91.16/day
	Hilltop Group Home	46.32/day	51.00/day
	Turning Point Boys Ranch	46.81/day	
	McLaughlin Youth Center	74.97/day	81.00/day
Out-of-State:			
	Excelsior Youth Center (Colorado - girls)	1,485/month	1,600/month
	Devereux Foundation	1,395/month	1,500/month

The State of Alaska through the Department of Health and Social Services, pays the entire cost for the services provided to a juvenile placed in one of these facilities.

The cost to place a youth in one of these group homes or institutions can be expected to rise annually approximately $10-$15 a day, and in some cases more. According to the 1978 figure, it cost the taxpayers of the State of Alaska at least $27,364 to place a youth in the McLaughlin Youth Center for a full year. The costs to the state for providing juveniles with supervision, treatment and rehabilitation under probation orders and institutional orders are very substantial. There is an obvious and pressing need for less restrictive and less costly short-term treatment programs which can be used as alternative dispositions for juveniles who otherwise might be placed in an institution.

Similarly, the cost of providing emergency placement services for young people seeking the aid of the Division of Social Services in Anchorage is continuing to increase. Presently, it costs the State of Alaska approximately $109.99 per day to provide these services to a juvenile in an Alaska Children's Services receiving home. These are the only facilities offering this kind of care.

There is little available data showing the effectiveness of Alaska's primary secured facility in rehabilitating juvenile offenders even though it has been in existence since 1969. Presently, DH&SS is in the process of formulating a Corrections Master Plan. It seems logical that planners should devote considerable time to exploring the possibility of providing short term treatment in community service restitution programs, wilderness stress-challenge programs, life-skills programs, and innovative group home programs in lieu of spending millions of dollars to build new locked juvenile institutions.

3) The extreme costs and questionable effectiveness involved in utilizing facilities both in and out of the state to institutionalize juveniles may explain in part why the use of institutional orders in Anchorage Children's Court and in the Third Judicial District as a whole, has been declining.

In 1976, there were 319 delinquency petitions filed and 65 probation revocation/modification petitions filed against juveniles. In the disposition of cases during that year, 268 juveniles were placed on probation and 46 juveniles were institutionalized.

In 1977, there were 342 delinquency petitions filed and 91 probation revocation/modification petitions filed against juveniles. In the disposition of cases during that year, 334 juveniles were placed on probation and 51 juveniles were institutionalized.

In 1978, there were 258 delinquency petitions filed and 66 probation revocation/modification petitions filed against juveniles. In the disposition of cases during that year, 255 juveniles were placed on probation and 29 juveniles were institutionalized.

There has been a significant 44 percent drop in the number of juveniles who were placed under an institutional order in the Third Judicial District from 1977 through 1978. This can be attributed directly to the smaller number of delinquency and probation revocation/modification petitions filed in 1978. Together, there were 109 fewer petitions filed in 1978 than in 1977. Other factors such as fewer serious crimes committed by juveniles in 1978, a new Children's Court Master in July, 1978, and an increase in the Court Intake office's staff may also have influenced the reduction. Currently there are 3 Court Intake officers and the capability of the Intake office to provide services has increased significantly in the last 3 years. The improved Court Intake screening process may mean that juveniles are noticably more delinquent today if they get petitioned on, than those of previous years. Likewise, the Division of Corrections has more resources today to help support a youth in the community, reaffirming its philosophy of utilizing institutionalization only as a last resort.

During the past year, there have been serious problems with the process by which DH&SS has identified placements for juveniles who were placed under an institutional order. To understand these problems, it is necessary to further discuss the stage at which the Children's Court Master recommends a disposition for a juvenile. At the disposition hearing, the Master will take into consideration the recommendations of the probation officer and the juvenile's attorney (private lawyer or public defender), and the desires of the juvenile's family. The Master's decision must in the end be based on the seriousness of the juvenile's offense and the availability and appropriateness of the different treatment alternatives.

If the Master decides that a locked treatment setting is needed for effective rehabilitation of a juvenile, there may be some discussion of the advantages and disadvantages of particular institutions. However, the Children's Court Master can only recommend a particular institution and the ultimate determination is made by DH&SS's Southcentral classification committee. There are similar classification committees for the Northern region in Fairbanks and for the South Eastern region in Juneau.

The Children's Court Master has the difficult task of recommending that a juvenile be placed under an institutional order without really knowing what institution the juvenile will be placed in . The classification committee holds a hearing within 5-10 days after the court has issued an order for institutionalization. The committee decides whether to place a juvenile in the McLaughlin Youth Center, at the Turning Point Boys Ranch, or in an institution outside of the state. The committee usually attempts to place a juvenile in either McLaughlin or Turning Point, if the youth has no unusual treatment needs and his or her family is still actively involved in the juvenile's life. Sending a juvenile to a facility out-of-state can lead to a significant deterioration in the juvenile's family relationship.

For a number of reasons, this classification process has not worked smoothly for some juveniles who have been classified to McLaughlin. Because McLaughlin is presently preferred as a treatment facility by the regional classification committees, it has in the past two years been in increasing demand. With four cottages and a smaller closed treatment unit, McLaughlin has a maximum treatment program capacity of 92. Given the average length of 14 months for a juvenile's treatment in the McLaughlin program, it has been necessary to hold juveniles classified to McLaughlin in the detention unit until a position in the treatment program opens up for them. The juveniles are placed on waiting lists by the specific date they were classified. The juvenile with the earliest classification date is the first to go into the program.

The period a juvenile waits for treatment at McLaughlin is affected by the results of the I-level evaluation of the youth's personality. This I-level evaluation is used as a clinical tool to determine which cottage program is the most appropriate. Consequently, each cottage program has its own waiting list. Therefore, a juvenile will wait until there is an opening in the particular cottage for which he has been evaluated.

At one point in the Spring of 1978, there were as many as 23 juveniles waiting in the McLaughlin detention unit to go into the cottage treatment programs. It was not unusual for some of these juveniles to be waiting 60-90 days and a few as long as four months in detention. The seriousness of this situation is apparent when one realizes that no treatment is given to a juvenile in detention. It is basically a period of unproductive time for a juvenile who has already been classified to the facility and who has a reasonable expectation that he will be receiving rehabilitation and treatment.

As a result of this set of circumstances, several attorneys representing juveniles being held in detention pending placement in the McLaughlin program sought their release. There was at least one review hearing that was granted when it was argued that the juvenile had been held an unreasonably long period of time (4 months) without getting treatment and that this was good cause for releasing the juvenile from McLaughlin. The Children's Court Master ruled that the juvenile could not be released because there were no treatment alternatives available. Clearly, the juvenile justice system in Alaska needs more classification alternatives in the state so that all institutionalized juveniles can receive appropriate treatment without having to be sent out of state.

The situation at McLaughlin last Spring has changed somewhat because the Division of Corrections has implemented a new policy which limits the period of time a juvenile can be held in detention waiting for program placement to 45 days. If a juvenile has to wait longer than the maximum 45 days, then DOC requires that the juvenile be reclassified to another institution.

Because of the new policy, McLaughlin for the first time has had some say as to whether a juvenile is appropriate for its treatment programs. If on the basis of a juvenile's I-level evaluation, the clinical staff at McLaughlin are reasonably certain the juvenile will not be able to get into the appropraite cottage until well after the 45 day period, they will not accept the juvenile's classification to the facility.

For a period of two to three months during the summer of 1978, it became very difficult for both the Southcentral and the Northern classification committees to place juveniles in McLaughlin. During that time, at least four or five juveniles classified by the Southcentral committee were turned down by the facility. These decisions have been appealed on a case by case basis to the Superintendent of the Division of Corrections who has ordered the juveniles to be admitted to McLaughlin.

The implementation of the 45 day policy has had the effect of causing some juveniles, who might have otherwise been placed in McLaughlin, to be classified by the Anchorage and Fairbanks committees to institutions outside of the state. In choosing to accept or reject particular juveniles classified by the Southcentral and Northern committees, McLaughlin has attempted to predict the turnover in its treatment programs. At best, this can only be a calculated guess based upon the progress of juveniles actually in treatment.

The lack of good predictors for McLaughlin program turnover does not respond well to the needs of the classification committees to classify juveniles to McLaughlin. It has been a difficult problem. In the summer months of 1978, McLaughlin's treatment programs were so full that few new classifications could be made to it. Yet, in October and November of 1978, there were a rash of terminations from the treatment programs which left almost a dozen openings in McLaughlin's cottages and closed treatment unit. The consequences of the variability of openings in McLaughlin's lengthy treatment process have a serious impact. The Children's Court Master may recommend that a juvenile be under an institutional order based upon the Master's reasonable expectation that the juvenile will be placed at McLaughlin. However, the Southcentral classification committee may find that there is no available opening at McLaughlin and may be forced to send the juvenile to an institution in another state. If in the Master's judgement the decision to institutionalize the juvenile turned on the availability of treatment in Alaska (specifically MYC), then it is reasonable to assume the Master may recommend state custody and probation; given he knew that a classification to McLaughlin was not possible. Another option is available if placement at an in-state institution is not possible. The probation officer can recommend to the court that a juvenile's order be modified to a deferred institutional order. This might preclude having to send the juvenile out of the state to another institution.

4) Because both McLaughlin and Turning Point have treatment programs which average over a year in length, they are not very responsive to an increase in the number of juveniles processed by the court who are found to need institutional treatment. Fortunately, the reduction in institutional orders in 1978 may signify a lessening of classification pressure on these facilities. One very significant tool in the dispositions issued by the Anchorage Children's Court Master has been the deferred institutional order.

There does not appear to be any statutory authority for issuing a deferred order. Chidlren's Rule 22 does allow the court to continue the disposition hearing for a period of time not to exceed 30 days, in order to acquire additional information upon which to predicate an effective disposition. For the last 8 years the Anchorage Court system has utilized deferred institutional orders for juveniles.

Presently, the Anchorage Court is using a deferred order for institutional placement when there are adequate grounds for institutionalization of a juvenile but the court feels that the youth might benefit from one more chance. In this case, the court's order delays commencement of the term of institutional placement for a specific period of time (30,60,90 or 120 days have been used). During this period, the burden is placed on the juvenile to abide by the conditions of deferment. These are very similar to conditions of probation. If a juvenile successfully abides by the conditions of his deferred order, then the order for institutional placement may be suspended. According to Anchorage Probation personnel, approximately 80% of the juveniles placed on a deferred order successfully complete it. There is a very strong argument to be made for developing more short term (30-60 days) treatment alternatives to be utilized by the court in Anchorage (and in other courts around the state) in conjunction with deferred institutional orders. By focusing treatment resources on juveniles during the period of deferment (increasing contact with the probation officer) and by increasing the use of deferred orders, it would be possible to significantly reduce the number of juveniles who actually are institutionalized.

Statute 47.10.080(b)(2)

As amended: (2) order the minor released to his parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor, but the court may dispense with the department's supervision if the court finds that the adult to whom the minor is released will adequately care for the minor without supervision; the department's supervision may not exceed two years or in any event extend past the date the minor reaches age 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

Examination of Change:

This subsection of the delinquency disposition statute did not change the court's authority to place a minor on probation to be supervised by DOC. A minor under this order will be released to his parents, guardian or a suitable person (i.e., relative). However, just as in subsection (b)(1) for commitment orders, this order can no longer be made for an indeterminate period of time. The revised subsection does not allow the order for probation to exceed two years and in no event past age 19. DH&SS is given the option to petition the court for a hearing to decide whether a two year extension of the order should be granted. Also, the court's order may be extended an additional year from 19 to 20 if determined in the best interests of the person and the person consents to it.

Legislative Intent:

Once again the intent behind the changes in the subsection was to limit the length of court orders for probation so that minors were not kept under state supervision for an unnecessarily long time.

Extent to Which Change Implemented:

The disposition of probation for delinquent juveniles has always been the most heavily used disposition by the Anchorage Court. In 1976, 268 juveniles were placed on probation; in 1977, 334 received probation orders and in 1978, 255 juveniles were placed on court ordered probation. This 24% decrease in probation orders during 1978 can be attributed in part to the overall decrease of approximately 25% in the number of delinquency and probation revocation/modification petitions filed. It is significant that this reduction in petitions filed and probation orders issued, occurred despite the fact that the level of juvenile referrals to the Court Intake office remained about the same between 1977 and 1978 (2,578 to 2,545). While referrals stayed constant, the total offenses involving juveniles referred to Court Intake increased 11% from 2,497 in 1977 to 2,778 in 1978.

The decrease in the petitions filed and probation orders issued must be credited in large part to the Court Intake office's improved diversion resources and capability and to the Division of Corrections' commitment to the informal handling of a large percentage of juvenile cases.

Probation as a dispositional order continues to be utilized often for first time juvenile offenders for whom it is determined probation services will be of benefit. It is usually a recommendation made in the probation officer's predisposition report. Oftentimes, the plan of treatment identified in the report to the court is not detailed but rather merely suggests the need for day to day supervision. While a juvenile's need for counseling may be a part of the plan of treatment, usually the plan lacks any completion dates for treatment goals. For the most part, the changes in this statute have not had any significant impact on the way probation has been ordered by the court or supervised by the probation office.

General Impacts of Change:

The overall effect of the probation order is to order the juvenile to abide by certain conditions with regard to attending school, improving his home-life, obeying reasonable parental restrictions and refraining from the commission of delinquent behavior.

The order may require the minor to meet with a probation officer on a regular schedule. Oftentimes, the probation officer serves as a role model for a single parent child that has been placed on probation. The supervision provided by a probation officer in Anchorage differs depending on the philosophy of the officer. Some actively help the juvenile seek employment, gain admittance to a school program, or obtain individual counseling from an agency in Anchorage. The probation office sees its responsibility to be to aid a juvenile in these processes, rather than to directly deliver these services. Hence, a juvenile on probation must take a substantial amount of responsibility for him or herself under the guidance of a probation officer. For example, a probation officer may require a juvenile to make daily reports on the youth's progress in securing job interviews.

The primary considerations in the court's decision whether to place a juvenile on probation to be released to his parents include the following: 1) a judgment based on the juvenile's offense, past delinquent behavior and the family situation as to whether probation services are the most appropriate treatment alternative, 2) a review of the amount of damage or loss caused by the juvenile's delinquent behavior and an assessment as to the need to order the juvenile to make restitution.

This second consideration stems from an investigation done by the probation officer into the actual dollar loss suffered by victims of the juvenile's offense. The investigation is initiated when the probation officer first reviews the Court Intake office case file after the juvenile's adjudication hearing. The common procedure involves sending out a letter to the people who have been identified as having had property stolen or destroyed as a result of the delinquent offense. The letter asks the victim to list all items that have been recovered by the police, all items not recovered and their value, items damaged and the estimated dollar amount of damage and the name of the insurance company (if any) which the victim may be having cover the loss.

The victim's notarized statement must be returned to the probation officer so that he can decide whether a restitution recommendation should be made to the court in the predisposition report. In giving the court factual information on the loss to the juvenile's victims, the probation officer attempts to balance the victim's loss with a reasonable restitution recommendation that is meaninful to the juvenile. Obviously if the actual loss is in the hundreds of thousands of dollars, there can be no reasonable expectation that the juvenile will be able to repay that amount. Once a specific restitution figure is ordered by the court to be a term of the juvenile's probation order (or commitment order), a probation officer has the responsibility to help monitor the juvenile's compliance with the court's order to make restitution.

The Anchorage Probation Services' last quarterly report for 1978 indicated that of the 297 juveniles under court ordered supervision at that time, 143 were required to pay restitution as a condition to their court order. There were 36 juveniles still on probation who had successfully completed restitution payments that were ordered by the court.

Payment of restitution is handled by the Anchorage Trial Court's bookkeeping office. The bookkeeper maintains a record of all payments made by the juvenile to the court and gives the juvenile a court restitution receipt. A probation officer will sometimes require that the juvenile bring in the receipts when they meet. The probation office's quarterly reports indicate how well each juvenile on probation is doing in making restitution.

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This progress is one of the key items a probation officer looks at in deciding whether to terminate a juvenile's probation period. Besides compliance with all of the conditions of probation, it is probation office policy (with some exceptions) that a juvenile has to have paid off the restitution before he will be terminated. It is not unusual for juveniles to continue to remain on probation for several months solely because they have not totally satisfied the court's restitution order.

Specific Problems with Implementation:

1) In cases where a juvenile's delinquent offense has caused damage or loss of less than $200, the expectation that the juvenile will repay that amount while on probation is reasonable. However, serious problems arise when the damage or loss caused by the juvenile is in the thousands of dollars and the court cannot justify ordering the juvenile to pay the full amount because of the impossibility of compliance. In this situation, the Anchorage Court has upon petition by a victim, released to the victim the names and addresses of the juveniles and the the juveniles' parents. This has enabled a victim to seek an additional civil remedy (see discussion of 34.50.020).

2) One area which is especially important is the development of a coordinated effort to give a juvenile placed on probation, effective treatment. Individual probation officers can make use of individual and family counseling agencies, employment agencies and other state agency or private programs to facilitate the progress of a juvenile on probation. This can be achieved if the Anchorage Probation office develops a plan to make the best possible use of community resources. It might be particularly effective supporting juveniles' efforts to satisfy restitution orders in shorter periods of time. Greater utilization of community resources can also help to stabilize juveniles who are having real difficulties while on probation. The end result could be a shorter average period of probation and possibly a lower rate of probation violations.

Probation violations reported by the Anchorage Court System have increased over the last three years from 161 in 1976, 194 in 1977, to 212 in 1978. In part, this might have occurred because of the reduction in the use of institutional orders so that a somewhat more experienced delinquent is now on probation than in past years.

3) In 1976, there were 65 juveniles who violated court ordered probation and had probation revocation/modification petitions filed on them. In 1977, there were 91 juveniles who had probation revocation/modification petitions filed on them. In 1978, the number of juveniles who had probation

revocation petitions filed on them decreased to 66. This 27.4% decrease in probation revocation/modification petitions was slightly more than the overall 24.5% decrease in delinquency petitions filed in 1978.

A probation revocation/modification petition is normally filed by the probation office. Violations of a probation order are usually used as a basis for filing this type of petition. This petition may be filed if a juvenile has breached the conditions of probation and the probation officer feels it is necessary to bring the situation to the court's attention so that more supervision for the youth can be provided. Sometimes the court will reemphasize to the juvenile and the parents the conditions under which the youth must act and this serves to correct the youth's misbehavior. However, occasionally a petition will be filed to revoke or modify the current court order to actually change the probation office's authority over the juvenile from solely supervision, to custodial responsibility. This is usually only done at the recommendation of the probation officer and after documentation of prior probation violations.

When a juvenile on probation commits a new offense, the police are the first ones to deal with the juvenile. The police subsequently file a report with the Court Intake office. The Court Intake officer makes an investigation of the juvenile's case and decides whether to file a new delinquency petition. The intake officer is always aware if the juvenile is already on probation and therefore, can communicate with the probation office about the circumstances surrounding the juvenile's situation. If a decision is made by the Intake office to file a new delinquency petition, then the juvenile has the right to request a jury trial.

Statute 47.10.080(b)(3)

As amended: (3) order the minor committed to the department and placed on probation, to be supervised by the department, and release him to his parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation. It may specify the terms and conditions of probation; the department may transfer the minor, in his best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, his parents or guardian and attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

Examination of Change:

This subsection of the dispositional statute gives the court the authority to commit a delinquent juvenile to the custody of DH&SS and also place the juvenile on probation to be supervised by DOC. Under this statute, a juvenile can be released to his parents, guardian or other suitable person or to a suitable non-detention setting. The significance of this new subsection is that it gives the court and DH&SS statutory authority to make certain dispositions which the court has actually been making at its discretion before August, 1977.

The statute allows DH&SS through DOC to place a juvenile in the family home, a group home, or a foster home while at the same time retaining legal custody of the youth. It also allows DOC to transfer a juvenile if deemed in his best interests from one probationary setting to another. The juvenile's parents and the juvenile must be given reasonable notice of the transfer.

Subsection (b)(3) follows the previous subsection in limiting the court's orders to a maximum of 2 years, with the possibility of 2 year extensions up to age 19 and an additional year of supervision to 20 if the juvenile consents.

Legislative Intent:

The intent behind the creation of this subsection was to give DOC greater leeway in handling a delinquent's probationary disposition. The change effectively legitimized what DOC had been doing in utilizing group and foster homes for juveniles on probation.

Extent to Which Change Implemented:

DOC has continued to place juveniles in the Booth Memorial Home, Hilltop Group Home, Turning Point Boys Ranch, Alaska Children's Services Group Homes (i.e., Jesse Lee Home) and in its 14-18 foster care homes. The total number of beds licensed in these foster homes is approximately 33. In the last year, the number of licensed foster care homes has dropped from the previous level of 20-25. Probation officers make periodical contact to supervise the juveniles in the non-detention settings. If a problem arises that necessitates a juvenile's removal to another setting, a probation officer has the authority to okay the transfer and presumably has the responsibility to make sure the youth and the parents are reasonably informed.

General Impacts of Change:

Though DOC is maintaining its previous use of non-detention placements, it certainly is on a more sound legal ground in making these placements. A juvenile will be committed to DH&SS and placed on probation under subsection (b)(3), if the Children's Court Master finds that there are serious on-going problems with the juvenile (and his home environment) which may necessitate state intervention. This disposition is rarely used for first time offenders. Rather, the court uses it when a juvenile delinquent's record warrants giving DH&SS authority to utilize a number of placement options in dealing with the pattern of delinquent behavior. Therefore, Corrections personnel have the flexibility to plan for a youth's progression from foster or group home care back into the parents' home, if desirable. Consequently, DOC does not have to take the juvenile back into court everytime a change in placement is warranted. Oftentimes, this disposition is recommended when a youth's family situation and home environment are unstable and could reasonably in the foreseeable future create the need to place the youth out of the home.

Specific Problems with Implementation:

1) There have not been any significant problems with implementing this subsection for either the court or DH&SS. The major problem relates not to the statutory language but to the serious need for additional state resources to develop a greater number of foster care and group homes. Foster homes in particular can only be further developed if the state increases the rate paid to foster parents for caring for a youth placed in their home. The present rate is set at a lever that some foster parents are actually losing money because of the placement. If the rate paid to maintain DOC foster care were increased, foster homes would be easier to recruit and easier to retain. Additional foster homes can be substitutes for juvenile placements in full cost-of-care institutions, saving the state thousands of dollars. Foster homes developed and licensed for three or four juveniles would significantly reduce state expenditures for individualized placements in full cost-of-care facilities.

2) There may be a problem with the requirement of giving reasonable notice to parents when a juvenile is transferred from one non-detention setting to another. Oftentimes, transfers are not planned in advance because the need for moving a juvenile may stem from an irrate foster parent's desire to get the youth out of his home. In these emergency situations, the placement is obviously not working out and should be changed. However, the probation officer should be diligent in remembering that the parents have the right to know when a juvenile is going to be transferred to another setting and should be notified in advance when possible, or as soon after the transfer as practicable.

Statute 47.10.080(b)(4)

As amended: (4) order the minor to make suitable restitution in lieu of or in addition to the court's order under (1), (2) or (3) of this subsection.

Examination of Change:

This newly created subsection gives the court authority to order a juvenile to make suitable restitution in lieu of or in addition to the court's order of probation, probation and commitment, or commitment to an institution.

Legislative Intent:

The intent behind this change in the law was to make restitution a specific dispositional alternative. It was thought that sometimes the best discipline for a delinquent is to have him pay back the victim of the delinquent act or work off his judgement. The word "suitable" is used to insure that the restitution the court orders is compatible to the offense committed, to the harm inflicted, and to the ability of the offender to satisfy the order. Not only is restitution to be considered in conjunction with the court's orders under subsection (b)(1), (2) and (3) but restitution can also serve as the court's only dispositional order. This is consistant with the major shift in the philosophy of juvenile rehabilitation in courts and legislatures around the country. In other state jurisdictions there has been an ever increasing use of restitution and community service in the disposition and diversion of juvenile offenders.

Extent to Which Change Implemented:

The creation of this new subsection has legitimized the present and past use, by the Children's Court Master, of restitution as a disposition. Presently, restitution is ordered as a condition to probation or in conjunction with an institutional order. According to the Anchorage Probation Services' last quarterly report for 1978, 143 of the 297 juveniles that were receiving probation supervision at that time, were under a court order (i.e. a condition to their court order) to pay some amount of restitution. The majority of these juveniles were under a probation order while a small number of them may have been receiving supervision after completing an institutional treatment program. In only one or two cases has restitution been ordered as the sole disposition for a delinquent juvenile. One case involved a juvenile who was just about to turn 18 and the probation officer had a pretty firm belief that the youth would pay the relatively small amount of restitution ordered. It was not practical to use probation as a means of enforcing the restitution order.

General Impacts of Change:

Before the August, 1977 change in this statute, the Anchorage Court commonly restricted the dispositional use of restitution orders for the payment of monetary restitution by a juvenile on a case by case basis. This was normally done in conjunction with a probation or commitment order.

After subsection (b)(4) was added as a dispositional alternative, the previous Children's Court Master continued to order monetary restitution in small amounts ($50-$100) when juveniles came before the court on vandalism charges or other related offenses.

In cases where the damage or loss caused by a juvenile involved a very large amount of money, the court has had a difficult time obtaining full compensation for the victims. In part, this is because the juveniles do not have the capability of repaying large amounts of money and the parents do not have the financial resources to satisfy the court's order. The court will allow a victim to petition the court for the release of the juvenile's and his parents' names and address so that a civil action can be brought under 34.50.020(a) to recover the balance of the damages.

The previous Children's Court Master did occasionally order a juvenile to perform a cerain number of hours of community service as part of the disposition. In some cases, he considered the community service disposition to be the most effective way to treat the youths for their delinquent behavior. It was left to the juvenile and his family to decide where and when the community service was to be done. This was usually ordered if there was little or no monetary restitution owing to the victim. The parents and the youth were free to contact a school, a church, or other organizations to arrange for the youth to perform the community service. If they could not make such an arrangement, the probation office sometimes referred the youth to the Anchorage office of Volunteer Opportunities. The juvenile's probation officer had the responsibility for monitoring the performance of community service and required written documentation. The juvenile and the parents were to accept some of the responsibility for choosing how and where to do the community service. Oftentimes if a juvenile successfully completed a community service placement, a letter of recommendation might be given to the youth by the placement agency.

Special Problems with Implementation:

1) Restitution can be a useful dispositional alternative only if there is a mechanism for making it happen. In the case of monetary restitution, the juveniles ordered by the court to make payments on a regular scheduled have to be able to find and hold employment. Their ability to be employed is the necessary cornerstone of the successful compliance with a restitution order. Many juveniles ordered to make restitution do not have jobs. Also, juveniles who do not meet the age requirements of the state's Child Labor Laws, find it practically impossible to secure employment in order to make the payments to the court. The logical consequence is that the periods of probation for these juveniles are longer and the costs to the state to keep the youths on probation increase. If a juvenile's probation is terminated despite his non-compliance with the court ordered restitution, the youth may be learning that the juvenile justice system's sanctions are not really to be respected.

2) When the court orders a specific number of hours of community service to be performed as suitable restitution by a juvenile, it must rely on the cooperation of the victim or of public or private charitable organizations. While the Volunteer Opportunities agency is sometimes able to match a juvenile referral to a volunteer placement, the problems of supervision and monitoring are either left to the probation officers or a supervising adult at the placement site. The obvious problems with this arrangement are that neither has enough time to devote to supervision and a system or method has not been established for providing efficient monitoring of those juveniles. Likewise, the present use of community service in the court's dispositional order lacks any means for enforcing the order and any resources in the community to actively recruit service placement sites. This lack of coordination affects the juvenile's attitude about the seriousness of the court's order and undermines the usefulness of restitution as a dispositional alternative.

3) The need for restitution, monetary and community service,as a disposition for juveniles is quite apparent from a review of the number of juvenile property offenses during the last three years. In 1978 the four offenses of petty larcency, concealment of merchandise, joyriding and destruction of property accounted for 52.2% of all juvenile offenses committed in Alaska's Third Judicial District. Petty larcency rose 230 cases, a significant 32% increase over the 1977 total. Similarly, there were 35 more destruction of property offenses in 1978, an increase of 24% over the 1977 total.

Overall, these four property offenses by juveniles increased to 1,316 (52.2% of all 1978 juvenile offenses), from the 1977 figure of 1,134 (45.4% of all 1977 juvenile offenses), and the 1976 figure of 1,069 (47.6¢ of all 1976 juvenile offenses).

Though there is clearly an upward trend in some property related offenses, grand larcency by juveniles has dropped significantly over the past 3 years. In 1976, 87 cases of grand larcency were referred to Court Intake compared with 72 for 1977, and 46 for 1978. Hence, there has been a 43% decrease in grant larcency by juveniles since 1976. There has also been a substantial decrease in the number of burglaries by juveniles in the last couple of years.

Statute 34.50.020(a)

As amended: Liability for destruction of property by minors. (a) A person, municipal corporation, association, village, school district or religious or charitable organization, incorporated or unincorporated, may recover damages in a civil action in an amount not to exceed $2,000 and court costs, from either parent or both parents or the legal guardian or person having the legal custody of an unemancipated minor under the age of 18 years, who maliciously or wilfully destroys real or personal property belonging to the person, municipal corporation, association, village, school district or religious or charitable organization.

(b) A state agency or its agents, including a person working in or responsible for the operation of a foster, receiving, or detention home, or children's institution, is not liable for the acts of unemancipated minors in its charge or custody.

Examination of Change:

This subsection was not changed in August, 1977, however, in talking with various people, it appears that some changes in the statute are needed.

Legislative Intent:

The intent behind this statute is to create a civil cause of action for victims of property offenses committed by minors. The victim can sue the minor's parents or legal guardian for up to $2,000 for the malicious or willful destruction of the victim's real or personal property.

General Impacts in Application:

The destruction of real and personal property by minors is a significant problem in Anchorage. Over 50% of all juvenile offenses involve the destruction of property. While this statute attempts to deal with the problem by creating a "cause of action" for a victim, there are some problems in applying the statute.

There are two specific problems. First, the victim must be able to prove that the minor acted maliciously or willfully. This has been a very heavy standard of proof for many victims. In one case the victim may be able to show that the minor did the destructive act but may be unable to establish that the minor had the requisite malicious intent. It has been suggested that the malicious or willful standard be dropped from the statute so that the victim need only show that the minor acted unreasonably.

Secondly, it is very difficult for the victims of property offenses committed by minors to learn the identity of the minor or the minor's parents. Hence, it is often impossible to initiate a "cause of action" because of the problem of knowing who to sue. Usually, the Division of Corrections' probation officer makes a recommendation to the court on behalf of the victims to have the juvenile's and the parents' name and address released. This normally happens when extensive damage has been done by the juvenile.

In Anchorage, the court has used the juvenile records statute (47.10.090(b)) as authority for ordering the release of the minor and the minor's parents' name and address to the victim for the limited purpose of being used in a civil action to recover damages for the destruction of real or personal property by the minor. It appears that the Anchorage Court is interpreting this section fairly liberally and it might be helpful if this statute was amended to add clarifying language to allow for the release of a minor's name for this purpose. Unfortunately, though the parents may be held liable to a certain extent; in many cases they may have little or no control over their delinquent child.

Specific Problems with Implementation:

In conversations with individuals familiar with the juvenile court process in other regions of the state, it was suggested that most other courts do not provide a mechanism for releasing information concerning the minor and his parents to the victim. If this is the case, then AS 34.50.020(a) probably does not provide a remedy to victims of juvenile offenses in these regions.

There has been some concern expressed about the need to raise the maximum level of parental liability from the present $2,000. A bill was introduced during the last Legislature raising this liability to $5,000. However, it did not leave the committee to which it was assigned.

Statute 47.10.060(d)

As amended: (d) A minor is unamenable to treatment under this chapter if he probably cannot be rehabilitated by treatment under this chapter before he reaches 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

Examination of Change:

For a juvenile to be waived to adult criminal court, the court must find at a hearing on a waiver petition that there is probable cause for believing that the minor is delinquent and that the minor is not amenable to treatment. Based on those findings, the court can order the case closed and the minor may be prosecuted as if he were an adult.

Section (d) of this statute was changed so the court, in deciding whether a minor is unamenable to treatment, can only waive jurisdiction if it finds there is probable cause and the minor cannot be rehabilitated by treatment before he reaches twenty (20) years of age. The previous age for determining unamenability to treatment was 21 years of age.

Legislative Intent:

This change in the statute was made to make it consistent with the court's authority under 47.10.80 to order a minor to remain in state custody or supervision beyond the age of 18 to age 20 if it finds the minor has not responded to treatment. Hence if the court is considering whether to waive a minor, the Legislature has mandated the court to consider the potential treatment the minor might receive up until 20 years of age.

Extent to Which Change Implemented:

From a review of the courts' statistics, there are very few waiver hearings held in the Anchorage courts. There have probably been less than six waiver hearings held in the last five years and of these, only one or two juveniles were subsequently waived to adult court. However, the amenability to treatment by age 20 issue has recently been a factor in at least two waiver hearings, one in Anchorage and one in Ketchikan.

General Impacts of Change:

1) Court Intake:

It is the Court Intake office's responsibility to initially determine whether a particular juvenile should have a waiver petition filed on him. In making that determination, Court Intake takes into account the age of the juvenile, the seriousness of the offense, the minor's previous record of delinquency and the likelihood the minor can be treated within the maximum time the Children's Court can take custody. If the Court Intake office decides to file a waiver petition, the State District Attorney's office takes over to represent the state.

2) District Attorney's Office:

The District Attorney's office has two attorneys that handle juvenile matters. One handles the majority of traffic, parks and recreation, and fish and game violations by minors which are now dealt with as adult cases in District Court. The other attorney has been involved in the recent attempt by Court Intake to waive a 17 year old juvenile to adult court. Court Intake's decision to waive this juvenile was based in large part on the fact that the delinquent offense was murder. If adjudicated a delinquent, the minor could be ordered to remain in state custody for treatment, under the present dispositional alternatives, for only two years until the age of 19, or for three years until age 20 with the juvenile's consent.

A somewhat troubling question has been created by the recent changes in the Children's Code regarding how the court should consider the additional voluntary year from 19 to 20 in determining whether the juvenile is amenable to treatment. The state's burden in a waiver hearing according to the amendment to 47.10.060(d) is to show that the minor probably cannot be rehabilitated by treatment before he reaches 20 years of age. If some probability of rehabilitation is established the court will make a second inquiry regarding the facilities available to the Division of Corrections for treating the juvenile. In most cases, expert testimony is presented by psychiatrists, psychologists, and the chairman of the juvenile classification committee (the committee carries out the Division of Corrections' responsibility to make juvenile placements in that region) on the issue of whether available facilities have an adequate program to treat the minor. The facilities which Alaska utilizes for the long term treatment of delinquents are the McLaughlin Youth Center, the Turning Point Boys Ranch, and several facilities under contract in the Lower 48.

3) The Court:

Generally, all juvenile waiver hearings are held before a Superior Court Judge. The Children's Court Master in Anchorage is usually only involved in the initial determination of whether probable cause exists in detaining the juvenile. The recent waiver hearing in the Anchorage Superior Court resulted in the judge finding the minor was amenable to treatment in the available facilities. In reaching that conclusion, the judge considered the minor's age, the seriousness of the offense, the probable cause of the delinquency, the history of delinquency, the minor's consent to an additional one year of confinement from age 19 to 20, and the probability of the minor's rehabilitation in available facilities.

Specific Problems with Implementation:

Three days after the Anchorage Superior Court decision, the Alaska Supreme Court issued the opinion In The Matter of FS (File No. 4015, Opinion No. 1756, November 9, 1978). This case involved a petition for review from a Superior Court Judge's decision in Ketchikan not to waive FS to adult court. The Supreme Court held that the lower court erred in considering the minor's consent to an additional one-year period of confinement in determining the minor's amenability to treatment. In effect, the Supreme Court stated that a juvenile cannot give advance consent to this additional year of confinement to age 20 because it is the Legislature's intent that the additional year of supervision may not be consented to prior to the minor reaching the age of 19.

Yet, while the Supreme Court said that the court should not give consideration to a minor's consent to the additional year from 19 to 20, it also reiterated that the court was correct in applying age 20, as the proper age for determining amenability to treatment. The Supreme Court found no conflict between 47.10.060(d) and the fact that the court's jurisdiction under 47.10.080(b)(1) is limited to committing a minor initially to the Department of Health and Social Services until age 19. The legislative intent appears contradictory in that it wanted the court to be able to commit a minor to state custody only until age 19, yet, also wanted the court to rely on the possibility of having the minor in state custody until age 20 (in considering whether the minor is amenable to treatment). However, the only way a minor can stay in state custody until age 20 is for the Department of Health and Social Services to petition for the additional one year between 19 and 20, and the court to find it in the minor's best interests and that the minor consents.

Statute 47.10.080(f)

As amended: (f) A minor found to be delinquent or a child in need of aid is a ward of the state as long as he is committed to the department or the department has the power to supervise his actions. The court shall review an order made under (b) or (c)(1) or (2) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. The department, the minor, the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

Examination of Change:

This subsection was amended to require the court to review annually the child in need of aid and delinquency orders to determine if continued services are in the best interests of the minor and the public. Though the court was previously under an obligation to make annual reviews, it must now examine the nature or quality of the minor's present placement, probation, or supervision more closely to determine if it should be continued. Arguably, language in the old statute that required the court to determine if a minor was being treated fairly may have required the same sort of inquiry. However, any vagueness about what fair treatment is, has been replaced by the court's duty to focus on the nature of the services provided the minor.

The amendments to this statute also give a minor the right to make application to the court for a review. All applications for review by the court must establish good cause. This new good cause standard must be met before an application is approved. Once approved, the court is now required to give reasonable notice of the review and actually hold a hearing to allow all concerned parties the opportunity to speak. A minor is still to be given the opportunity to be present at the review.

Legislative Intent:

The intent behind the changes in this statute was to place greater emphasis on the review of services and to ensure the protection of the rights of these affected by the review. In considering the child's best interests in an annual review, the Children's Code Task Force decided to drop the area of fair treatment and the language requiring the review of the actual treatment and care being rendered was added. The changes were intended to extend certain due process rights to a minor who desires to apply for a review and further develop the due process procedures of the review.

Extent to Which Change Implemented:

This amended statute is applied in all annual reviews and good cause reviews for juveniles who are subject to court orders for delinquency or child in need of aid. The McLaughlin Youth Center, the Anchorage Probation office, and the Division of Social Services have incorporated the statute's requirements into their operating procedures.

General Impacts of Change:

1) Probation:

The Anchorage Probation office does annual reviews for all juveniles under a court delinquency order in the Anchorage region except for those youths in placement at the McLaughlin Youth Center. If a juvenile is placed in any other facility in the Southcentral region licensed by the state (i.e. Jesse Lee Home, Turning Point Boys Ranch, etc.), a probation officer in the Anchorage office will do the annual review.

Presently, the court is notifying the probation office of the dates on which specific annual reviews are to be submitted. A memo is sent from the court clerk's office one month prior to the due date. In all cases, annual review reports are required to be presented to the court one year from the date the dispositional order was made.

The probation office has not significantly changed its methods of performing annual reviews since the statute was changed. A probation officer fills out the review form and includes a summary of how the juvenile is progressing and what, if any, are his current problems. If before the time for an annual review arrives, a probation officer believes that continued state placement or probation is no longer required, he will petition the court to terminate its delinquency order.

The Anchorage Probation office is also responsible for doing annual reviews for those juveniles from the Southcentral region who have been institutionalized in facilities in the Lower 48. The problems inherent in reviewing a juvenile's progress while in an institution in Texas, Colorado, Utah or California are obvious. The annual reviews presently are prepared on the basis of biannual visits to each institution by DOC personnel, quarterly contacts with the institution by telephone, and periodic visits to the institution while accompanying other juveniles who are being transported there for placement.

The biannual visits are conducted by a state outside classification committee. This committee is made up of the Division of Corrections' alternate care coordinator and usually two DOC regional administrators.

Recently the Anchorage Probation office has begun to make monthly contacts with each institution. This change was prompted by a directive from the State Division of Corrections' office in Juneau. While there has been no uniform state standard for contacting the Lower 48 placement facilities in which Alaskan delinquent juveniles are held, every effort should be made to ensure that this monthly contact is being done by probation personnel in other regions of the state. The contact should be made on a frequent basis and it should include verbal communication with both institutional staff and the juvenile.

Overall in 1978, Anchorage Probation services filed 72 annual review reports with the court. These reviews were for all Southcentral juveniles on probation or institutionalized (except in McLaughlin) both instate and out of state.

With regard to good cause reviews, the probation office has taken the position that if a parent or juvenile wants the court to review its order prior to an annual review, they must assume the responsibility for making the arguments and application for review themselves.

2) McLaughlin Youth Center:

In the Anchorage region, the McLaughlin Youth Center is the only facility that performs its own annual reviews for the court. In 1978, McLaughlin conducted 47 annual reviews and filed the same number of reports with the court. The annual review for any juvenile placed in its custody follows substantially the same format as an annual review done by a probation officer. The annual review is prepared by the youth counselor responsible for the juvenile's treatment program and includes an evaluation of progress and recommendation for the court. The report is to be prepared and submitted fifteen days prior to the annual date to the presiding judge of the appropriate Judicial District.

In the case of good cause reviews, the McLaughlin Youth Center is aware of the changes in the statute but has not really seen an increase or decrease in the number of requests for a review hearing. Generally, if one juvenile is involved in an application for a review hearing, other juveniles also begin to consider doing so. As a result, there is a cyclical impact in application for review hearings. If one juvenile is successful, others sometimes will follow that lead and request a review.

3) Public Defender:

The public defender is available to delinquent juveniles (who can qualify for the services) to obtain assistance in making application for a review hearing. It is difficult to assess the actual impact of the change in the statute; it appears that the public defender is continuing to receive requests from juveniles in McLaughlin for aid in obtaining a review hearing. The public defender will usually interview the youth and file a petition for review with the court stating the reasons why the review is for good cause. Generally the good cause would include allegations of the continued improvement in the juvenile's behavior and that the juvenile has been in state custody so long that he no longer needs treatment. Good cause may also include statements as to the ineffectiveness of a facility's treatment program for a particular juvenile.

The public defender has also received requests from juveniles who would like a full review hearing at the time of the annual review. Presently, annual reviews of delinquency orders are done on paper as part of a court administrative review of the report submitted by a probation officer or the clinical services director at McLaughlin. According to the statute, the court must review annually but it does not specifically state a hearing has to be held in annual reviews. There are several constitutional questions that havebeen posed as to whether a juvenile has the right to be present and be heard at the annual review. Does a delinquent juvenile in state custody have a constitutional right to a due process hearing at the time of annual review and regardless of this, can a juvenile prepare something on his own behalf for the annual review? These questions are as yet unanswered.

4) Division of Social Services:

A juvenile who is under a court order as a child in need of aid also receives an annual review of that order by the court under 47.10.080(f). The nature of that annual review in Anchorage has beenfor the court to make a written review of reports submitted by the Division of Social Services. The court's review is directed towards determining if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public.

Another new statute which took effect in August, 1977, AS 47.10.083, states that certain information must be required by the court in a child in need of aid review hearing. This information is clearly required in a good cause review hearing and it could be argued that the same information is required in hearings for annual review.

Before the changes in the Children's Code, DSS was preparing an annual review report that was the subject of an administrative review by the court. In some cases this would be a paper review of long term placements in state custody for children who suffered severe mental retardation, were unadoptable or abandoned by the parents. However, if 47.10.080(f) and 47.10.083 are read together it may be interpreted that starting in August of 1978, all those children under a child in need of aid dispositional order should be receiving an actual due process annual review hearing of the court's order. In Anchorage, these annual review hearings are not being held and the court continues to do only an administrative review of the DSS annual report. Whether child in need of aid annual reviews in Anchorage will be done with full due process hearings in an open question.

There may be some practical reasons for why these hearings are not held. Usually at the time of an annual review, the factors that were present at the original disposition hearing are no longer available. In a typical situation, shortly after the disposition, the child's guardian ad litem is terminated, the State Department of Law closes its case, the parents' legal counsel is terminated, and several of the parties may actually leave the state. Marshalling all of these parties back together again one year after the disposition, places a very heavy burden on the court in Anchorage. Apparently, courts in smaller communities outside of Anchorage, such as Bethel, are holding annual review hearings for children under a child in need of aid order. In those hearings, a DSS worker presents the annual review in court and the judge makes a determination based on that report. It is not clear whether the courts in Kodiak, Cordova; Valdez and Seward are holding annual review hearings or if their procedures are entirely different.

Presently, there are Alaska children under child in need of aid orders in institutions in the Lower 48. In the past year, the Anchorage office of DSS has placed a girl in the Excelsior Youth Center in Colorado. This institution is utilized for emotionally disturbed girls who are borderline psychotic but not serious enough to require commitment to the Alaska Psychiatric Institute. This placement lasted only two months and the girl now is back in her own home. DSS has also placed a boy in the St. Mary's Home for Boys in Portland, Oregon.

The annual review process for those children under DSS jurisdiction in out of state facilities relies entirely on the report from the institution on the progress of the child. This report is used by DSS workers to prepare an an annual review report to the court. The total number of children placed in Lower 48 institutions by the Division of Social Services' offices around the state is approximately 40. Assuming that other regional offices send as many or more children than the Anchorage office to out of state facilities, there seems to be a need to improve the quality of the annual review that these children receive. Because there is no standard for making periodic contacts with the institution or making visits to each facility during the year, the annual review is totally dependent upon the information supplied by the institution.

5) The Court:

The court in Anchorage has been impacted by the changes in subsection 80(f). While it continues to do an administrative review of annual reports for delinquency orders, the court has had to interpret when an application for a delinquency review hearing has established good cause for a more frequent review. Generally, the good cause for review might contain allegations that the juvenile no longer needs treatment, is not receiving treatment, is being abused, or some other equally serious condition that necessitates a modification of the court's order. The court has granted one application for a review hearing where the parents of a minor in placement in McLaughlin alleged that the girl was no longer benefiting from the treatment program. The parents felt that the girl was being unfairly dealt with as the result of minor facility violations that caused her to lose program status in accordance with the McLaughlin point system. The parents, without the aid of an attorney, successfully argued in the subsequent review hearing that the girl's relationship with the family had sufficiently improved to allow the court to modify its institutional order. The Master of the Children's Court modified the court's order and released the girl to her parents. A key factor in the decision may have been that McLaughlin also recommended to the court the release of the juvenile.

Another question has been raised as to whether the court will consider the unavailability of a particular institution (i.e. McLaughlin) to a juvenile as good cause for reviewing the court's order. In at least one case, a juvenile was under a court institutional order and was placed in McLaughlin. Because of the waiting list to get into the McLaughlin cottage treatment program, the juvenile had to wait four months in the facility's detention unit. Application was made to the court for a review hearing alleging that good cause existed to review the court's order because the juvenile was just "being warehoused" in detention. This application was rejected apparently because there were no other treatment alternatives available.

On a related issue, the Alaska Supreme Court in its opinion, In the Matter of J.M. and M.M. (573 Pacific Reporter 2nd 1376) issued in January, 1979 has stated children adjudged dependent under the old standards of AS 47.10.010(a)(5) are entitled on request, to a dispositional hearing under the new child in need of aid standards. This means that children under a court order of dependency because of the lack of proper parental care by reason of the faults, habit or neglect of their parents, legal guardian or custodian, need only request a review hearing under the new child in need of aid standards to establish good cause for the review. Potentially, the court is faced with a flood of hearing requests on behalf of those children adjudicated under the old dependency statutes. To date, only a very few parents of children have requested that good cause review hearing.

Special Problems with Implementation:

1) It has been suggested that subsection 80(f) be amended to clarify whether a hearing for the annual review of a child in need of aid order is to be required. The statute could be changed to allow a parent or minor to request a hearing at the end of one year (for the annual review) but the hearing would not be automatic. This would resolve the issue of whether the Anchorage Court must hold these hearings and there would still exist the right to a good cause review hearing. At the end of two years, under the child in need of aid dispositional statute (47.10.080(c)), a due process hearing is also still required under the new Children's Code, if the state desires to continue its custody or supervision of a child in need of aid.

2) It has been suggested that the good cause review hearing process for minors adjudicated delinquent and placed in facilities out of the State of Alaska, is difficult if not impossible to provide. An average of between 30 and 40 juveniles under court orders of delinquency are in placement in other states. It is extremely difficult for these juveniles to establish the same good cause for a review of their court order that a juvenile placed in McLaughlin can. There are few, if any, legal or parental resources available to them to bring their allegations to the attention of the court in Alaska. There is however, a periodic visit made by Alaska Corrections personnel to evaluate treatment in out-of-state facilities. It may be that Alaska juveniles are given some opportunity to inform the Corrections personnel of any reasons necessitating a review of the placement order.

It is not clear from the research done in this project exactly how many children in need of aid are placed in out-of-state facilities and what, if any, good cause review hearing process exists for them through the Department of Health and Social Services.

3) Finally, it has been suggested that annual reviews of court orders of delinquency may not be being done in other areas of Alaska. Because the statute places the burden on the court to do an annual review, each court must take the responsibility to require the appropriate reports from facilities and probation officers in its region. Because the annual review serves to inform the court of the progress of the juvenile under the court's orders, every effort should be made to ensure that these annual reviews are being done.

Statute 47.10.010(b)

As amended: (b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, a fish and game statute or regulation under AS 16 or a parks and recreational facilities statute or regulation under AS 41.20, excepting a statute the violation of which is a felony, the procedure prescribed in secs. 20-90 of this chapter may not be followed, except that a parent, guardian or legal custodian shall be present at all proceedings. The minor accused of a traffic offense, a fish and game statute or regulation violation under AS 16 or parks and recreational facilities, violation under AS 41.20 shall be charged, prosecuted, and sentenced in the District Court in the same manner as an adult.

Examination of Change:

This subsection of the jurisdictional statute was changed to require that minors who are accused of committing a fish and game or parks and recreation violation must now be processed in District Court in the same manner as adults unless the violation is a felony. If the violation is a felony the minor is treated as a regular juvenile offender and is processed through the Court Intake office. Minors charged with traffic violations continue to be handled as adults in District Court.

Legislative Intent:

The legislative intent behind this change was to remove these types of violations from the Court Intake office's responsibilities, and thereby lighten its caseload. At the same time, the statute was intended to provide more effective sanctions for this kind of behavior through the use of fines and short sentences in District Court.

Extent to Which Change Implemented:

The processing of fish and game and parks and recreation violations by minors is now handled through the District Attorney's office if it is a misdemeanor. A park ranger might issue a minor a citation for the unauthorized use of a snowmobile in a closed area or a fish and wildlife protection officer might issue a minor a citation for fishing illegally in an area closed to salmon fishing. The ranger or officer gives the minor a copy of the citation and a notice of when the minor is to appear in District Court. A typical violation during the past year was handled this way.

The day prior to the minor's court appearance, the District Attorney first learned he was handling the case. He usually received a copy of the citation and a police report if there was one. The next day the minor appeared in District Court before a judge and either pleaded guilty or not guilty. If he pleaded not guilty the case continued.

Because of the high volume of cases in District Court, the District Attorneys office assigned one person on a weekly basis to supervise the screening of misdemeanants. This screening process sifted out the inappropriate cases for prosecution and usually only assigned those cases for prosecution that involved malicious, outrageous or intentional violations.

The District Attorney can recommend a deferred prosecution because of the child's age or because it was a first time offense in the case of juveniles 11, 12 and 13 years old that appeared in court. In the cases that were prosecuted, the likely outcome was a fine or a forfeiture of the fishing equipment involved.

General Impacts of Change:

A. District Attorney's Office:

The District Attorney's office has taken on the full responsibility for prosecution of juvenile misdemeanants in fish and game and parks and recreation violations. Though their prosecution system is effective for adults, it has not been very responsive to juveniles. The fact that screening only occurred after the juvenile's first court appearance meant very young juveniles were subjected to the same threatening atmosphere of a formal District Court setting as an older juvenile. The screening done by the District Attorney's office did little more than let a number of juvenile offenders escape liability. Realistically, the minors that pleaded guilty or were successfully prosecuted did not feel the consequences of the adult sentencing fines. Rather the parents of these minors usually paid the fine. According to the District Attorney's office, several of the District Court Judges are uncomfortable with the handling of juveniles in their court and in one instance, a District Court Judge has gone so far as to question the constitutionality of treating juveniles as adults for these types of criminal violations.

B. Court Intake:

Up until the change in this statute, the Court Intake office had processed all juvenile fish and game and parks and recreation violations. The overwhelming majority of these cases were handled informally with the minor being warned against future violations. A few delinquency petitions were

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filed each year for these types of violations. The usual outcome was the minor would pay for the loss or damage directly, or in certain cases, a small amount of community service with the Department of Fish and Game would be ordered. Overall, the Court Intake officers did not feel comfortable in exercising their responsibilities over these juvenile offenders and felt particularly ineffective in dealing with them.

C. The Court:

The District Court is now the focal point for the vast majority of juvenile fish and game and parks and recreation violations. District Court Judges have been faced with problems such as what to order for a nine year old cited for having snagged salmon in a closed stream. It may be that the District Court is even less able to respond effectively to these types of juvenile violations than Court Intake personnel.

Specific Problems with Implementation:

The change in the jurisdiction over juveniles for these types of violations may not have been totally beneficial for the Anchorage Court System. It is questionable whether juveniles are being held any more responsible for their actions in these areas. Judges may be having a hard time sentencing a juvenile especially when the sentencing alternatives do not seem very appropriate.

A certain amount of concern has been expressed by the parents of minors who have been handled formally in District Court for fish and game violations. These parents have questioned the appropriateness of processing these juveniles in adult court and also have expressed outrage at having their children's names printed in the police column of the newspaper.

During 1978, there were approximately 20 juvenile fish and game violations handled in District Court. Because there was no time for the District Attorney to screen the cases before arraignment, all of the juveniles charged were arraigned. If the juvenile were under the age of 18, they had to have been accompanied by their legal custodian. Twelve of the 20 juveniles pleaded guilty at the arraignment and most of these received a suspended imposition of sentence. This generally resulted in their payment of the $25 court costs and the conviction does not show up on their record. Approximately 4 of those who pleaded not guilty received a six-month deferred prosecution. This means that the prosecution will be dropped if there is no similar violation within six months. Only 3 of those pleading not guilty actually went to trial. These juveniles were prosecuted because of the seriousness of the offense, the juvenile's prior record, and the juvenile's attitude. All were found guilty and fined.

As of January 15, 1979, the District Attorney's office in Anchorage began to screen all misdemeanors before arraignment. This may mean that many juveniles committing fish and game violations will not have a complaint filed on them. Hence, they will either not be arraigned or their case will be deferred at their arraignment.

While the actual handling of juvenile fish and game cases in District Court may not be proving very effective, there have been some positive impacts for others involved in the cases. Because the cases are now handled in District Court, the court's victim assistance officer is able to obtain a much earlier release of evidence than was possible in juvenile court. Also, fish and game personnel feel that it is now much easier to find out the ultimate disposition of a juvenile's case.

General Background Information:

Social Services for Children in Anchorage -

The child in need of aid statute (AS 47.10.010) as applied in Anchorage has been implemented by the Division of Social Services in the following manner: initially, a set of circumstances comes to the attention of a DSS social worker which might fall within one of the sections in the statute. These circumstances are written up in a report and then are discussed with the casework supervisor. Some of the reports will eventually be reviewed and screened by the DSS court referral specialist. This screening helps DSS distinguish between emergency situations (usually involving abuse or gross neglect, and parents that are uncooperative) and non-emergency situations (less severe problems in the child's family, and parents that are willing to cooperate).

In the latter cases, DSS has the option of entering into a voluntary agreement with the parents pursuant to AS 47.10.230(c). In more severe neglect and abuse cases, DSS usually attempts to take emergency custody of the minor pursuant to AS 47.10.142 and temporarily place the minor outside the home.

Once a case has been screened by DSS, a decision is made whether or not to petition for a child in need of aid determination by the court. If DSS decides to file a petition, the case is discussed with one of the state's assistant attorney general's who works with children's matters. The petition is subsequently sent to the attorney general's office and is reviewed carefully. From that point on, DSS and the state's interest in the particular child in need of aid case are represented by the assistant attorney general assigned to the case.

The parents of a minor alleged to be a child in need of aid have the right to be represented by the public defender if they are indigent. In 1978, the public defender in Anchorage represented parents in 45 different child in need of aid proceedings. Parents that do not qualify for the public defender must obtain their own private attorney. In these proceedings, a child is normally represented by the court guardian ad litem if the child in need of aid petition reaches the adjudication stage. In 1978, the court GAL represented children in 23 different child in need of aid proceedings.

Because of the different levels of involvement by social workers, supervisors, the court referral specialist, and the state assistant attorney generals, only a very few cases ever reach the petitioning stage. The final determination on whether or not a petition is brought by the state pivots on four questions:

1) What protective function is the state serving?

2) What specifically can the state expect to accomplish in bringing this petition?

3) What is known about the factual situation supporting the petition?

4) Are the facts sufficiently strong to warrant bringing the petition to the court?

This process of deciding whether to petition for a child in need of aid is sometimes a very difficult one. The state's objectives must be evaluated in terms of the realistic services and placement settings which the state can provide. The sufficiency of the evidence must be evaluated according to the reports from the social workers and from an assessment of the credibility of the facts provided by others included in the reports. What the facts are and how they are presented have a great deal to do with whether a child in need of aid case ever reaches the court.

In the first year's application of the child in need of aid statute, 90 petitions were filed, an average of 7.5. per month. The general jurisdictional basis for the petitions can be broken down by the subsections of the child in need of aid statute. There were 17 petitions brought for runaway situations, 42 petitions for abuse and neglect, and the remaining 31 in abandonment situations.

During the first year, 769 new cases were opened by Anchorage social workers for an average of 64 per month. These new cases were opened in response to over 3,252 intake calls to social workers. This was an average of 271 intake calls per month. In Anchorage, there are 15 DSS social workers and these workers rotate with three on intake duty each day.

DSS usually responds to an intake call by examining the substantive facts of the call, and then by examining the alternative courses of action that could be taken. At the social worker level, this will involve a consideration of: 1) taking emergency custody, 2) providing appropriate social services, 3) entering into a voluntary agreement with the parents, or 4) taking no action.

DSS will usually take emergency custody if a minor has been abandoned, grossly neglected or abused (so that immediate medical attention is necessary) within the meaning of the terms in AS 47.10.142.

If the situation involves a minor who has left home and is evading the person having legal custody of him (running away), a social worker must respond if the minor is seeking the services of DSS. If this is the case, DSS must assess the situation and furnish the minor with the appropriate social services to protect the minor. In some cases, this may only mean opening a case file and beginning an investigation. In other cases, it might include supplying temporary shelter and care for a minor who has come to DSS with these immediate needs.

After assessing the situation and furnishing the appropriate services, DSS may take emergency custody. If it does take custody of a minor, DSS must file a child in need of aid petition with the court and notify the parents of its action within 12 hours of the time it takes custody. Upon the filing of a petition, the court must within 48 hours hold a hearing to determine whether probable cause exists for believing the minor to be a child in need of aid.

Alternatively, DSS may consider entering into a voluntary agreement with the minor's parents. This allows the state to care for and make appropriate placements for minors for a period of up to six months (AS 47.10.230(c)). Such an agreement is a short term solution to situations where the parents are either incapacitated (i.e. going into the hospital) or are otherwise temporarily unable to care for the minor. The agreement usually has a specific set of goals which the parents are to work on and a strict time frame in which to accomplish those goals.

Because of the voluntary nature of the agreement, it can be revoked by the parents at any time; as a consequence, it has limited usefulness in severe abuse and neglect cases. One of its major limitations is that parents cannot be forced to take more responsibility for their child then they willingly agree to. The parents need to have the motivation to work with a social worker to improve the family situation during the period of the voluntary agreement.

The final option open to DSS is to do nothing but monitor the situation through future intake calls. Initially, supportive counseling is given over the telephone or during an interview and the child or family may be referred to another agency for more counseling. The majority of intake calls are handled in this way because they do not present the substantive facts that require greater state involvement.

Statute 9.65.130(c)

As amended: (c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, upon the motion of either party or upon its own motion, appoint an attorney or other person to serve as guardian ad litem to represent the best interests of a minor in any legal proceedings involving his welfare. The court shall appoint a guardian ad litem when, in the opinion of the court, representation of the child's best interests, to be distinguished from his preferences, would serve the welfare of the child. The person appointed under (a) of this section may also be appointed as guardian ad litem under this subsection. The court in its order appointing a guardian ad litem shall limit the duration of the appointment of the guardian ad litem to the pendency of the legal proceedings affecting the child's interests, and shall outline the guardian ad litem's responsibilities and limit his authority to those matters related to his effective representation of the child's best interests in the pending legal proceeding. The court shall make every reasonable effort to appoint a guardian ad litem from among persons in the community where the child's parents or the person having legal custody or guardianship of the child's person reside. When custody, support, or visitation are at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that these matters are at issue. Upon notification, the court shall determine if the child's best interests need representation or if the child needs other services and shall make a finding on the record before trial. The court shall enter an order for costs, fees, and disbursements in favor of the child's guardian ad litem and may further order that other services be provided for the protection of the child.

Examination of Change:

This subsection was created by the Children's Code Task Force to directly address the issue of the appointment of a guardian ad litem to represent the best interests of a minor in any legal proceedings involving his welfare. The court is to appoint a guardian ad litem when representation of the child's best interests would serve the welfare of the child.

One significant change was that the person appointed may be either an attorney or other person. The court is to appoint a guardian ad litem in an order limiting the duration of the appointment to that proceeding and outlining the guardian ad litem's responsibilities. The court is to make a reasonable effort to appoint a guardian ad litem from among the community where the person having legal custody of the child resides.

Legislative Intent:

This statute was intended to more clearly delineate the role of the guardian ad litem and distinquish between the need for an attorney and a more neutral person who can represent the minor's best interests. In allowing for a non-attorney to be appointed and in giving the court the responsibility to make that appointment from the child's own community, the Task Force intended to ensure that children from bush communities could be represented by people from their own cultural background.

Extent to Which Implemented:

This statute has had a limited impact on Anchorage children's proceedings. Prior to the change in the statute, a guardian ad litem was appointed by the court to represent minors in legal proceedings. This list was compiled without screening the attorneys for appropriate qualifications or experience. An attorney had only to call the court to get on the list. The appointments were made by going down the list to see who was available.

Presently, the Anchorage Court System has negotiated a contract with one individual to serve as the court's sole guardian ad litem for a six month period. This experimental pilot project started last August 20, 1978 and terminated the previous appointment process for children's proceedings. The six month contract has just been renewed and the present court GAL will continue in that role until August 20, 1979. Under the terms of the contract, the guardian ad litem is officially the court GAL for the entire Third Judicial District.

General Impacts of Change:

The change in this statute has certainly focused attention on the need for an effective guardian ad litem in children's proceedings. It's real impact may be being felt in bush communities outside of Anchorage, because the court representatives in those communities now have the authority to appoint a non-lawyer from the community itself.

However, the change from the guardian ad litem list to the use of one permanent guardian ad litem has certainly had some impact in Anchorage. The actual effectiveness and efficiency of having one court GAL will have to await an evaluation of a full year of experience under the contract. While it is difficult now to assess the impact, some consideration should be given to the advantages and disadvantages of having one person solely responsible for representing the best interests of young people in Anchorage children's proceedings.

The theory behind having a permanent GAL is that the court can be assured a more uniform level of competency in its children's proceedings. With the former list, the court sometimes appointed attorneys who had little expertise in children's matters and who could not devote a substantial amount of time to a case. Because the court did not have a mechanism for screening potential guardian ad litems, the quality of a child's representation varied greatly, depending upon who was appointed.

In deciding to contract with a single lawyer to be the court's guardian ad litem, the court has sought to develop a professional who can respond effectively to represent the best interests of children. This arrangement is not without certain disadvantages.

The court is cutting off a large amount of community resources in no longer making it possible for attorneys to regularly participate as guardian ad litems in children's proceedings. While creating a specialist in these matters, the court is also denying the diversity and richness that might be developed by training those attorneys who genuinely want to represent minors in legal proceedings. Also, it may be that a single guardian ad litem will have too high a caseload to devote as much time and energy as is desired in child in need of aid proceedings. In addition, the court will have to anticipate the possibility that the permanent GAL, once trained, may want to leave that position. Thus, a newly appointed person will have to acquire the special skills and familiarity with community resources very quickly, in order to be an effective guardian ad litem. Knowledge of community counseling, psychological evaluation, institutional and shelter facility resources is important in representing the best interests of a young person.

Special Problems with Implementation:

1) Up until February 1, 1979, the court guardian ad litem for the Third Judicial District has had approximately 48 appointments since August 20, 1978. Appointments are usually recommended by either party in a divorce-custody action, by the court child custody investigation, by a Superior Court Judge on his own motion, or by the Children's Court Master in child in need of aid proceedings. Should a case come to the attention of the court GAL, he could independently recommend appointment to the court. All appointments have to be signed by a Superior Court Judge.

The 48 guardian ad litem appointments in the Third Judicaial District can be broken down in the following categories:

1) child in need of aid	23
2) divorce-custody	22
3) delinquency	1
4) probate	1
5) incompetency	1
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With the exception of two or three cases the court GAL has been able to meet with the child or children before the court proceedings. At least two of the child in need of aid cases involved allegations of sexual abuse. The court guardian ad litem is of the opinion that sexual abuse is a much more frequently encountered problem than the figure indicates. Oftentimes it is difficult to obtain information on the alleged facts of the sexual abuse, and allegations become claims of physical abuse in a child in need of aid petition. There were also allegations of sexual abuse to a child in at least three of the divorce-custody cases.

It is very rare that the court guardian ad litem is appointed in delinquency proceedings. The only appointment that was made involved an appointment for the specific purpose of ensuring that a juvenile accused of a crime was fully aware of the consequences of consenting to an additional year of state custody (age 19 to 20) at his dispositional hearing.

2) While the caseload has not been unmanageable for the court guardian ad litem, there may be problems if more appointments are made in Third Judicial District Courts outside of Anchorage. All courts in the Third Judicial District can consider the guardian ad litem as an available resource. However, there have only been two appointments made in cases being tried in other communities. One of those cases involves a paternity suit in Valdez, where the Standing Master recommended that the court guardian ad litem be appointed. The other case is being heard in Dillingham because of the inconvenience of having the parties come to Anchorage. The court GAL will have to go to Dillingham for the proceedings. The obvious problems of increased expenses and scheduling conflicts may be created if more appointments are made to cases heard in courts in other areas of the Third Judicial District.

3) One perceived problem that presently exists with the appointments of the court guardian ad litem is the lack of awareness by some private attorneys and even a few Superior Court Judges of the existence and availability of the court GAL. This is mostly a communication problem and it may be that some Superior Court Judges are still using the previous guardian ad litem list. The court should make an effort to inform all Superior Court Judges, Standing Masters, and Magistrates in the Third Judicial District of the role of and the procedures for notifying and appointing the court GAL in cases where a child's best interests need to be represented.

Parties to a divorce proceeding and their attorneys have a responsibility to notify the court when child custody, child support or child visitation are at issue in a divorce. The court then must determine if the court GAL should be appointed to represent the child's best interests. Where the parties or their attorneys are not aware of this responsibility, it is important that the court inquire into the need for a guardian ad litem.

4) The new guardian ad litem statute is not being implemented in Anchorage as it was intended. The statute requires the court to outline the guardian ad litem responsibilities in each appointment. This does not appear to be happening. Though the present court GAL is getting timely notification in most appointments, there is never any directive from the court specifically outlining the GAL's duties. Oftentimes, it is not clear from the appointment exactly what kind of children's interests are involved. This places the burden on the court GAL to initiate contacts with private attorneys who are representing parties to an action.

There are at least two reasons why the guardian ad litem appointment process should involve a more specific outlining of responsibilities. Besides complying with the intent of the statute, a Superior Court Judge can give the court GAL more information and direction which will aid the effective and efficient representation of children's best interests. If one is not already in use, the court should consider a standard form providing for detailed responsibilities.

The second reason for complying with the statute, involves a concern for a subsequent challenge to a GAL's actions. If the court GAL's responsibilities are not delineated, there is always the possibility of someone later in a proceeding challenging the scope of the guardian ad litem's actions. While the statute speaks in terms of "limiting the GAL's authority to those matters related to the effective representation of the child's best interest in the pending legal proceeding," there is an obvious grey area in which the guardian ad litem must operate. The extent to which a GAL disagrees with the Division of Social Services in certain aspects of a child's treatment plan, may cause someone to challenge the GAL's actions as overstepping the authority given in the court's appointment.

5) There is general agreement that the interests involved in children's proceedings are too important to be left to inexperienced and poorly informed attorneys. If the court finds after evaluating a full year's experience using a single court GAL, that returning to a list of private attorneys is preferable, the court should establish qualifying guidelines and criteria for attorneys who desire to be on the court's guardian ad litem list.

Statute 47.10.010(a)(2)(A)

As amended: (2) to be a child in need of aid as a result of

(A) the child being habitually absent from his home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to care for him, including physical abandonment by
(i) both parents,
(ii) the surviving parent, or
(iii) one parent if the other parent's rights and responsibilities have been terminated under sec. 80 of this chapter or voluntarily relinquished;

Examination of Change:

Subsection (A) gives the statue authority to intervene when a minor is habitually absent from hime, refusing to accept care, or when a minor has no caring parent, guardian, custodian or relative. To a certain extent the first two clauses have replaced the former child in need of supervision statutes. The old statute dealt with a minor being habitually truant from home or habitually disobedient or wayward and uncontrolled by his parent or in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others. The third clause in this subsection deals with parental care for a minor and had the effect of replacing the former dependency statutes dealing with abandonment or the lack of proper parental care by reason of the faults, habit or neglect of the minor's parent, guardian or custodian.

Legislative Intent:

This subsection refocuses the direction of the jurisdictional statute from issues of parental behavior and blame to the issue of actual or imminent harm to the child. It gives a minor who believes his home situation is harmful or imminently harmful the alternative of going to [illegible] for aid. DSS can take jurisdiction over the minor if it finds that the minor is refusing available care.

Extent to Which Change Implemented:

This subsection has been used considerably in the filing of petitions for a child in need of aid. Most petitions are filed in neglect situations where DSS finds that there is no parent caring for a child. The part of the statute applying to situations where no parent is caring for a child or the more obvious cases or larger physical abandonment of a child are fairly easy to apply.

The "habitually absent from home" language has not been an effective grounds for filing a child in need of aid petition. The emphasis of this language is on the past habitual acts of a minor and not on the present status of the minor. If the state took custody of a minor who was shown to have been "habitually absent from home" there can be no realistic expectation that the minor will remain in a foster home placement. Practically speaking, a minor who is habitually running away and does not desire the aid of DSS, may be unwilling to confirm his behavor to the temporary placement setting provided by DSS. (See analysis of AS 47.10.142.) Frustration with this type of minor has been expressed by DSS oficials and resulted in the implementation of an informal policy at the caseworker level.

A minor's refusal to accept available care under this statute has been utilized to file petitions. The overwhelming majority of runaway situations are approached by examining whether a minor is refusing the available care of his parents.

General Impacts of Change:

1) Division of Social Services:

The most overwhelming impacts from the creation of this child in need of aid subsection have been felt by DSS. The Division has been placed in the position of responding to a variety of community groups aware of children in unstable living situations. Whether from parents who patience and control over their child has reached its limit, or from school counselors who advocate for state intervention in a child's unhealthy home environment, DSS caseworkers must determine which cases factually fall within the state responsibilities under this statute.

In some cases Anchorage social workers must decide between seemingly contradictory interpretations of the laws made by the court and the Attorney General's office. Fortunately, DSS has just completed a very thorough program manual which will help to train and bring uniformity to all social workers' understanding of the child in need of aid statute and the court proceedings dealing with it.

DSS receives many calls from parents who feel they have lost control of their child. Some of these parents take the position of refusing to care or provide for the child any longer. By making this affirmative statement, the parents are assuming (hoping) the state will step in and take custody or gain control of the minor. In at least one case, a parent legally argued that under subsection (A), he was unwilling to care for the child and therefore the state had the necessary grounds to file a child in need of aid petition. Whether through misinformation from other agencies given to parents or as the result of inappropriate legal advice, some parents feel they have the right to relinquish their responsibilities for their child under this statute.

DSS is having to make parents aware of their continued responsibility to work with a child on the sources of the family problems through counseling in agencies in the community. DSS has to react to the small percentage of minors that are referred to it who are running away, refusing to accept available care, but not seeking aid from DSS. Because of the lack of a therapeutic containment program in the Anchorage community, DSS is not able to effectively deal with these minors.

DSS is developing a better understanding of when it is appropriate for the state to get involved in situations when a child is refusing available care but is seeking assistance from the Division. For these runaway minors, the state's assistance may take the form of temporary shelter by providing the minor an opportunity to avoid physical and emotional abuse in the home. However, because of the limited resources available in Anchorage to respond to adolescent runaway situations, DSS has had to make some difficult decisions regarding the real danger to a minor from his present environment before a petition for custody will be considered.

2) Attorney General's Office:

The Attorney General's office has the primary responsibility for interpreting the state's responsibilities under the child in need of aid statute. The petitions from DSS have already been discussed with DSS's court referral specialist when they are assigned to an Assistant Attorney General. Comments in this report were solicited from each of the Assistant Attorney Generals who work with children's proceedings.

The "habitually absent from home" language of subsection (A) has not been used as a basis for filing a petition. Problems with its emphasis on past running away instead of the immediate needs of the child, and the court's inability to fashion a remedy that can effectively deal with the habitual runaway, are the likely reasons why it has not been used (see analysis of AS 47.10.140).

The language providing jurisdiction when a child is "refusing available care" is the key statute for most of the child in need of aid petitions involving runaways. The Assistant Attorney Generals look to the reason why the minor is refusing care and do not think that this section of the statute should be used as a tool to enforce parental rights against a child.

The Attorney General's office believes that a child's "refusing to accept available care" is a helpful jurisdictional ground on which to take temporary custody of runaways who seek the aid of DSS. Many times, these are situations where a factual basis for identifying problems in the home is lacking but the outward behavior of the child indicates there are serious problems. According to the Assistant Attorney Generals, the key to the state's involvement revolves around an evaluation of the reasonableness of a child's refusal to accept available care. There has to be some substantial problem in the home that justified the child's refusal to stay home.

Several cases have helped to clarify the limits of a child's reasonable refusal of available care. In one case, a 15 year old girl sought the aid of DSS because she refused to remain at home. She felt she had a right to be treated better than she was in her present home situation. The court found a deplorable home environment in which both parents were alcoholics who treated the child as a slave in the home. While the court upheld a child in need of aid petition based upon this child's reason for refusing to stay home, it is safe to say that a child's desire to run away with a boyfriend would not alone be found to be a reasonable basis for refusing the available care in the home.

However, the reasonableness of the child's refusal to accept available care is not always the overriding factor in the successful petitioning for a child in need of aid under subsection (A). In some situations, if a child is refusing to stay home because of the drinking habits of his parents, the court will probably recognize the reasonableness of the child's refusal. Yet, if the child's refusal to accept available care is based upon a physical confrontation with a parent, the court has not always been consistent. In one case, a mother threw a knife at a child and the child came to DSS and explained why she would not go home. The court found the reason the child did not want to go home was not sufficiently substantial. Because the parents wanted the child home, the court ordered the child to return home. Nevertheless, in a case involving almost the exact same circumstances and reasoning for the child's refusal to go home, the court placed the child in state custody.

3) The Court:

The impacts on the court of subsection (A) of the child in need of aid statute have been varied. As mentioned previously, this subsection took the place of the former child in need of supervision statute which allowed the state to take jurisdiction over a child who was habitually disobedient. The loss of the child in need of supervision sections of the statute may have cut off available treatment to 5% of the children who come before the court. These minors are acting out of disobedience in running away from home and often commit crimes for self-support that cannot be proved because of the lack of evidence.

The overall impact on the court may be that 20 juveniles a year who exhibit this uncontrolled and impulsive behavior may not be coming before the court. The court in 1976, in the LAM decision, found a child in need of supervision in criminal contempt for violating the court's order not to run away. A petition for juvenile delinquency was later filed against the girl, basing the delinquency on the minor's violation of the contempt statute. This same delinquency possibility may also face a minor who is adjudicated a child in need of aid for refusing to accept available care in running from home. If after the disposition hearing, the minor continues to run from home in the face of a court order to stay at home, the basis for charging the minor with criminal contempt still exists. To date, two minors have been ordered home by the court under this subsection (A), but in both cases the court's order has not been broken.

In the majority of runaway situations where a child is refusing available care and causing a petition to be filed with the courts, the cases are dismissed. These are situations where the state will not proceed because there is no apparent harm or risk if the child is left in the home. The court is not according a child the right to be adjudicated a child in need of aid solely because of the child's own desire not to go home. The court is looking for something more compelling which indicates a severe detriment to the child if he is returned home.

If both the parents and the child are in general agreement that the situation is hopeless and that the child should not be in the home, the cases are uncomplicated. The problems arise when the court is faced with a child who is refusing to accept available care and alleges that going home will be harmful, while the parents still want the child home. In one such case, the court had to decide a petition on a 16 year old girl who was pregnant and who refused to live at home. She had decided to have the baby. The girl refused to go home (refused available care) because her parents kept insisting that she have an abortion. The court found that the childs refusal to go home was reasonable in light of the substantial harm that might be brought about if the girl continued the pregnancy while living at home.

Specific Problems with Implementation:

1) The court has had difficulty with the language "having no parent, guardian, custodian or relative caring or willing to care." It has been suggested that the language is too loose and gives almost every parent a loophole in the statute. All parents can express a willingness to care that on the face of the statute, will defeat the petition. There is absolutely no way the state can show the parents are unwilling to care. The parents usually go along with the proposed treatment. In practice, the court is interpreting "willing to care" as meaning able to care. In the process, it is stretching the language to give more explicit consideration to the parents' inability to provide or care for a child. The majority of people talked to, recommended that the statute be amended to substitute "able to care" for "willing to care."

2) The court has also had difficulty in determining whether there is any custodian of the child who is "caring" or "willing to care." The custodian in subsection (A) is generally acknowledged to be a non-relative who has something less than legal custody of the child but has physical custody. Very often these individuals are ignored when this statute is applied in a child in need of aid situation. A typical case occurs where the parents have agreed to have a child stay with a non-relative but the non-relative has no legal standing to get welfare benefits or financial aid for the child. One case involved a 3 year old child who was left in the custody of an 18 year girl for three months while the mother was out-of-state. No arrangements were made for the support of the child because the mother had said she was only going to be gone a week. If a child in need of aid petition has been filed on behalf of the 3 year old because of the child having no parent, guardian, custodian, or relative caring or willing to care, the petition might have failed because the 18 year old girl was a "caring" custodian. This is the reason that most custodians are ignored in applying this subsection of the child in need of aid statute.

It is generally recommended that language be written into the statute to alleviate this problem. It is also recommended that the state amend the Children's Code to develop a process that allows the voluntary transfer of legal custody of a child from a parent to a friend or relative. This process could legally create certain custodial rights while leaving parents with residual rights. It would be very beneficial for all those custodians having the physical control of another's child but who have no present access fo financial assistance or benefits from the state to help pay for the child's support.

3) The court also may have a problem because the language referring to "parent, guardian, custodian or relative" is too exclusive. There is the potential problem that the availability of a relative of the child who is willing to care in the immediate future could be a barrier to a child in need of aid adjudication. Under 47.10.142 the Division of Social Services must file a petition within 48 hours of taking emergency custody of a child. If subsection (A) language about "the lack of a caring parent, guardian, custodian or relative" is used as the grounds for the petition, the state appears to be under a burden to show within that 48 hours that there is no relative caring or willing to care.

This creates the possibility of a "shirt tail" relative demanding the release of the child at a later probable cause hearing because the grounds for the petition are no longer present.

4) The "habitually absent from home" language of this subsection has not been used and it has been generally recommended that the language be dropped from the statute.

5) The "refusing available care" language of this subsection has proven useful under circumstances where a minor is refusing care and there is no parent willing to care, or a minor is refusing care and there exists a clear detriment or harm to the child if sent home. The court is having some difficulty determining what kind of detriment or harm must be part of a child's refusal to go home. It has been recommended that a child's refusal to accept available care be placed in a subsection by itself so that the court can give more weight to a child's unwillingness to go home. It is considered a viable section of the law especially if proof problems exist in applying the abuse subsection to the child's situation. It has also been recommended that the language be amended to require a finding of a child refusing available care and there being present circumstances showing detriment to the child.

6) Much discussion has been made of the use of a juvenile's "refusal to accept available care" in his home as grounds for filing a child in need of aid petition. This has been the basis on which several petitions have been filed with the court. However, people have raised the issued that the statute does not specify that the refusal must concern available care in the home. Could not a petition be filed if a juvenile refuses the available care in a DSS emergency care facility? If the police detain a juvenile who is evading his legal custodian and transport him to a DSS emergency shelter, and the juvenile runs from the facility, it seems that there is an even stronger basis for arguing that the juvenile is refusing to accept available care.

7) There appears to be a serious concern shared by some parents in the Anchorage community that their children are not being adequately served by the Division of Social Services through application of the child in need of aid statute. Generally, these juveniles are young people that have received evaluative services and treatment at the Alaska Psychiatric Institute but who have been found not to be actually psychiatrically ill. On the basis of psychiatric evaluations, API has often, in these cases, made recommendations to parents and the Division of Social Services for more appropriate treatment for the juveniles in a less restrictive setting than API. Usually, these recommendations have involved DSS taking emergency custody or petitioning on the juveniles as a child in need of aid. Unfortunately, there have been numerous instances where API has discharged a juvenile only to have DSS fail to take the necessary action to provide services to the juvenile as outlined in the recommendations. While the reasons for this situation are beyond the scope of this report, some effort should be directed by representatives of DSS and API in Anchorage to reach a better understanding regarding how these juveniles and their families can best be served under the present statutes.

Statute 47.10.010(a)(2)(B)

As amended: (B) the child being in need of medical treatment to cure, alleviate, or prevent his suffering substantial physical harm, or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and his parents are unwilling to provide the medical treatment;

Examination of Change:

This subsection of the child in need of aid statute allows the state to intervene when a child is in need of medical treatment to prevent substantial physical or mental harm and the parents are unwilling to provide the treatment.

Legislative Intent:

The legislative intent of this subsection was directed at preventing harm to children who specifically need medical care but whose parents for some reason or because of some circumstances do not see that medical care is provided.

Extent to Which Change Implemented:

The subsection of the child in need of aid jurisdictional statute has seldomly been used as grounds for a petition in Anchorage. In one of the few Anchorage cases in which it was applied, DSS recommended that a child receive counseling but the father refused to allow the child to participate in any counseling program unless he was physically present or had access to tapes of the counseling session. The state based its petition on the grounds the parent (under subsection B) was unwilling to provide treatment as normally defined. In that case the court found the child to need medical treatment in the form of counseling to prevent substantial mental harm.

In the majority of situations, however, this subsection is of limited use in Anchorage because parents almost always agree to provide treatment. Thus agreeing to treatment, the requisite unwillingness of the parents required by the staute is no longer present.

In another instance, the subsection was used to file a child in need of aid petition for a young native girl living in a small village on Kodiak Island.

DSS recommended that specific medical treatment was necessary to prevent substantial physical harm. Though the parents were willing to provide treatment, as a practical matter no treatment was available locally and transportation to an urban center with medical facilities was very expensive. The court ruled in favor of the petition so that DSS could provide the child access to medical treatment that the parents were physically and financially unable to provide.

General Impacts of Change:

While the general impacts of this subsection have been few in the Anchorage area, it is quite possible that this statute receives more use in the rural areas of the state. Certainly, the presence in the statute of language dealing with the protection of children from mental harm is potentially a very useful tool. The mental and emotional needs of a child can be protected even though the child is not appropriate for commitment to the Alaska Psychiatric Institute.

Specific Problems with Implementation:

While no significant problems have been experienced with the statute in Anchorage, there are several possible problems in the background. One is the extent to which the parents' unwillingness to provide medical treatment is only an unwillingness in attitude, or can it also be as a judge has applied it, an unwillingness in financial ability.

Secondly, the provision for providing treatment to prevent substantial mental harm describes mental harm in very scientific terms such as failure to thrive and "untoward" aggressive behavior. This may eventually mean that expert testimony will have to play a crucial role in the application of the mental harm standards. It may also allow for the use of a child's failure to thrive under this subsection as the basis of a petition in a severe parental neglect situation.

It has been recommended that the statute be amended to read that the parents are unwilling or unable to provide the medical treatment.

Statute 47.10.010(a)(2)(C)

As amended: (C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by his parent, guardian or custodian or the failure of his parent, guardian or custodian adequately to supervise him,

Examination of Change:

This subsection of the child in need of aid statute made more specific the grounds on which the state would intervene in a parent-child relationship to protect the child from actual or imminent physical abuse. This was a significant change in the statutes. Previously physical abuse was being defined through case law interpretations of some rather vague dependency statutes. Initially, one of the first interpretations of substantial physical harm meant that a child could not be removed from the home unless there was shown to be a life endangering situation. This standard evolved to where the court had to make a preliminary finding of probable cause that the child would become a dependent as the result of the conditions of abuse. In essence then, this new subsection helps to conceptualize physical abuse in the statutes and is a significant improvement in that respect.

Legislative Intent:

The legislative intent behind this change was to make very specific the grounds for physical abuse upon which the state will intervene in a family to protect a child from physical harm.

Extent to Which Change Implemented:

Next to subsection (A), this subsection is the second most often utilized statute for a child in need of aid petition in Anchorage. There are four key parts to the statute that need some explanation. First, a petition can be based on the grounds that a child has suffered (past oriented) substantial physical harm. Secondly, a petition can be based on imminent and substantial risk that the child will suffer such harm (future oriented). Thirdly, a petition could be based upon substantial risk of harm brought about by conditions created by a parent (passive assistance). Fourthly, a petition could be based on the failure of the parents to adequately supervise a child which leads to harm or a substantial risk of harm.

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General Impacts of Change:

1) Petitions that are based upon facts showing a child has suffered substantial physical harm usually present a strong argument for state intervention. The most obvious cases involve blatant physical abuse. However, because substantial physical abuse is not defined in the statute, it is continuing to be determined on a case by case basis by the court. The substantiality of the harm is usually found in cases that have required hospitalization or treatment, or lead to permanent bodily injury. These cases have at times involved a parent beating a child with a baseball bat or whipping a child with an electric cord.

On the other end of the spectrum, a hard spanking, a push, or a slap by a parent will not rise to the level of substantial physical harm. While there is some concern for setting the standard too high, it also must be recognized that the borderline between the parents' right to discipline a child and the child's right to be free from physical harm is not an easy one to distinguish.

The Attorney General's office takes the approach of first looking to see how the child is being harmed, with an overall concern for protecting the child from abuse. An attempt is made to side step personal value judgements with regard to the fault of the parents or the nature of the living conditions in the home.

The substantial physical harm standard has been successfully argued in one petition where the child suffered severe bruises. There was no permanent damage to the child and no broken bones, but the state successfully petitioned to terminate the parents' rights based upon evidence showing extreme bruising of the child over an extended period of time. This case is on appeal to the State Supreme Court. It does suggest that a child who has suffered several beatings at the hands of parents though no permanent damage is done, may be found to have suffered substantial physical harm.

2) A second type of petition that is filed under this subsection occurs in cases where a child is faced with an imminent and substantial risk of physical harm by a parent. What the court usually looks for is some past abuse of the child by the parents and a continuing attitude by the parents that could further foster abuse. It is a combination of looking at the immediate past conduct of a parent, and also presenting expert testimony that the parents' present attitude might foster abuse. One case involved an intoxicated woman who dropped her young baby on the street in the middle of the winter and it was shown that her continued attitude might foster this type of harm again.

3) A third type of petition that is filed is based upon an imminent and substantial risk of harm to a child as the result of conditions created by a parent. This language in the statute has been extremely helpful. Prior to this change, one parent of the abused child could move for custody of the child simply because he was the non-injuring parent. Now the statute holds both parents to an indirect responsibility to protect the child from harm.

One common situation occurs when both parents are at home, and one parent physically harms the child but the other one does not. The statute now requires the second parent to take more than a passive role and to try to prevent the abuse.

Another common situation occurs when the mother of a child has a boyfriend who is abusing the child. If there is physical abuse or sexual abuse (under 47.10.010(a)(2)(D) being done to a child, the mother can be successfully petitioned against because of the conditions she has helped to create which have led to the abuse.

4) Finally, a petition can be brought as the result of a parent's failure to adequately supervise a child which has created an imminent and substantial risk of harm to the child. One case involved the general neglect of the singe parent to provide for any food in the house for the children to eat. This was deemed as the parent's failure to adequately supervise the children. Other cases have involved a young child receiving a serious head injury because the parents neglected to watch him, and the case of a four year old boy being locked in a closet for an extended period of time by the parents.

Specific Problems with Implementation:

1) Some people have suggested that the standard for substantial physical harm be more clearly defined in the statute.

2) It was also recommended that the Legislature consider adding the substantial mental harm that exists in 47.10.010(2)(a)(B) to subsection (C). It could be very helpful and is needed to cover the area of mental and emotional abuse more thoroughly.

3) It is suggested that the state needs to do a better job of presenting its evidence to the court. This means that DSS workers should put more stress on the actual harm to the child in its investigative reports. The fact that the DSS program manual will soon be utilized for training purposes should help remedy this situation.

4) The court itself has expressed a concern over the definition of the types of conditions created by parents for which parents might be accountable for under this subsection (C). If a parent takes a child to a babysitter and the child is abused, how is the court to determine whether the parent helped to create the conditions for the physical abuse? It may be that if it cannot be shown that a parent was neglectful, then the statute's concept of "created" may require the court to inquire whether the parent had a reasonable basis for expecting harm to occur to the child. Maybe a knowledge or reasonable belief of the imminent and substantial harm should be required of the parent by the statute so that it does not have an overboard application. How is the parent to be protected from state intervention if he leaves his child off at the day care center and the child is subsequently abused?

Statute 47.10.010(a)(2)(D)

As amended: (D) the child having been sexually abused either by his parent, guardian or custodian, or as a result of conditions created by his parent, guardian or custodian, or by the failure of his parent, guardian or custodian adequately to supervise him;

Examination of Change:

This subsection of the child in need of aid jurisdictional statute provides for the state to intervene when a child is being sexually abused by a parent or guardian, or as a result of conditions created by that parent or guardian.

Legislative Intent:

The legislative intent of this subsection was to make specific the basis for the state's authority to act to protect a child from sexual abuse.

Extent to Which Implemented:

About one-tenth of all the child in need of aid petitions filed in the Anchorage Courts have been based, at least in part, on the sexual abuse statute. According to the Attorney General's office, it is quite surprising the number of cases where allegations of sexual abuse arise. As a practical matter, these allegations are very seldom contested in a trial but rather the allegations are usually dropped.

There are a variety of reasons that account for this. First of all sexual abuse allegations need some kind of medical confirmation and witness collaboration. Oftentimes, the state has only the statements of a child filled with fear and anxiety over the consequences of revealing the sexual behavior of a father, step-father or a boyfriend. For this reason, a judge usually does not want the child to testify. The court guardian ad litem is usually appointed for the child. The guardian's role is to represent the best interests of the child in the proceeding and after interviewing the child, act as the sole spokesperson for the child in court.

The previous practice had been to appoint a guardian ad litem from a list of private attorneys who had expressed an interest in serving in that role for children's proceedings. The quality of representation by these attorneys was very inconsistent. In certain cases, an attorney's unfamiliarity with the role of a guardian ad litem in a dependency action had a negative impact on the whole proceeding. Presently, the Anchorage Superior Court has entered into a six-month pilot program which has involved hiring one guardian ad litem for all children's proceedings.

Another reason sexual abuse allegations are often dropped is because of a tactical decision made by the state. In the vast majority of cases the sexual abuse has occurred in a family with multiple problems (mental abuse, physical abuse,etc.). Oftentimes, the parents agree to the state's proposal to take custody of the child. This is sometimes incorporated into a pre-adjudication stipulated treatment plan. In these situations, a father is willing to stipulate to the custody issue based on some other grounds in the child in need of aid petition. Therefore, the state has accomplished some of its objectives in getting the child out of a harmful home situation.

One of the difficulties in proving a sexual abuse allegation in an adjudication hearing is that the court does not permit the use of hearsay at that stage of the proceedings. Consequently, if the child does not testify, the state is hard pressed to carry its burden of proof.

General Impacts of Change:

The sexual abuse subsection of 47.10.010(a)(2)(D) has had the effect of establishing specific statutory language to replace DSS's authority to petition the court for custody of a child allegedly suffering sexual abuse. In a typical situation, when a case allegedly involving sexual abuse comes to the attention of a DSS caseworker and if the facts warrant it, DSS will file a petition for Temporary Placement and Adjudication of child in need of aid. This is the same procedure as in other abuse situations that necessitate immediate state action. The court has 48 hours in which to hold a hearing to determine if probable cause exists to believe the child is "in need of aid." This probable cause hearing is a critical stage for determining if the child is in a dangerous situation that warrants the state taking temporary custody. In the past it has been very difficult to gather all of the necessary parties and witnesses for the hearing within that short 48 hour period. However, recently the Children's Court Master has seen fit to allow the use of some hearsay testimony at this hearing. If this testimony is found to be sufficiently reliable information by the Master, this helps to ease the state's burden to produce all of the witnesses in the brief time period before the probable cause hearing.

Of the sexual abuse petitions that are actually filed with the court, one of general impacts is the child is almost always removed from the home. In one particular case a teenage girl was temporarily removed from the home because the stepfather continued to sexually molest the girl. While this might seem like the most logical action to take, the teenage girl could not resolve in her own mind why she was the one removed from the home. Removal may be a very painful experience for a young person requiring the termination of support systems such as attendence at a particular school or the ability to socialize with her friends. In every child in need of aid case, it is always the child that suffers the consequences of the parents or guardian's abusive behavior.

Specific Problems with Implementation:

1) As previously mentioned, sexual abuse is very difficult to prove given the child or other children may be the only ones making the allegations. The court must look at the age and credibility of the child. Oftentimes, it is simply the child's word against the father's or stepfather's word. The court does utilize psychological testing to help examine the child's present state of mind with regard to the allegations.

2) Sometimes if sexual abuse has been committed against one child, the court is faced with the difficult decision of determining the potential impacts on other children in the home. In the case of a white middle class home, these issues would probably be easier to resolve in favor of removal of all of the children because of the community norm of "outrage" at incidences of the sexual abuse of children.

Yet, the questions are of a significantly different nature when the state has to consider the removal of a child or children from a family in a rural community. In rural villages where a case of incest or sexual molestation is brought to the attention of the state, the real questions are: how great are the benefits to the child going to be if protective action is taken to remove her from the family, and what are the actual harms to the child that may be created because of the child's removal from her home and community. The severe consequences of the state taking custody of the child will lead to the separation of the child from her family, community, and some cases culture. It may also be that the norm of the rural village community is "less outraged" with sexual abuse and therefore the psychological impacts of sexual abuse on the child may not be as great as in a more white middle class community.

3) The methods by which sexual abuse cases are investigated, reported, and evidence presented need to be improved to more effectively deal with sexual abuse problems that stem from real sexual behavior disorders in certain parents and guardians. The state is very hesitant to institute a criminal prosecution for incest because the child usually feels a great deal of guilt and the end result may be that the father is lost to a family

for several years. Addressing the problem through a child in need of aid adjudication could lead to a court order that requires the parent to have special counseling and treatment for his behavior. The court guardian ad litem has represented the best interests of children in 2 child in need of aid and 3 divorce-custody proceedings in which there have been serious allegations of sexual abuse. One of the more difficult aspects of a sexual abuse allegation is that the allegation is almost always easier to act on when the allegation is made close in time to the act or acts of sexual abuse. This, in effect, places the burden on a young person to come forward and volunteer this information despite its sensitivity. It appears that more public and school education regarding sexual abuse is desparately needed.

Statute 47.10.010(a)(2)(E)

As amended: (E) the child commiting delinquent acts as a result of pressure, guidance, or approval from his parents, guardian or custodian.

Examination of Change:

This subsection of the child in need of aid jurisdictional statute provides that if the court finds that a child has committed a delinquent act as the result of parental pressure or guidance, the court can find the child in need of aid instead of petitioning for delinquency.

Legislative Intent:

The legislative intent behind this subsection was to acknowledge that some juveniles commit delinquent acts because of certain degree of external motivation from a parent or guardian. The statute allows for these juveniles to be treated differently than the common delinquent. The court is given the authority to examine the juvenile's behavior in terms of the parent-child relationship rather than placing on the youth the sole responsibility for his actions. The statute allows the court to address the attitudes and actions of the parents as well as those of the child. This is most appropriately done when a social worker works with a whole family.

Extent to Which Change Implemented:

In only a very few cases has a child in need of aid petition been based on this subsection. One specific case involved a teenage girl who ran away from home and stayed with friends for a few days. She subsequently went home to get some of her clothes and found the clothes removed from her room. She proceeded to go into her mother's room and took several items of her mother's clothing. The parents then called the police and filed a complaint against their daughter for burglary. This case was eventually handled as a child in need of aid matter and a petition for juvenile delinquency was not filed.

General Impacts of Change:

From a practical standpoint the Court Intake office has not significantly changed its handling of this type of situation. If a Court Intake officer has a case where a child has committed an act of delinquency because of the pressure or guidance of parents, the officer does not file a petition for delinquency. Many of these cases involve young children 11 or 12 years old and under, who really are not committing delinquent acts by their own free will. Often the juveniles are used by neglectful parents to commit shoplifting or similar offenses in order to provide material goods for the family. The majority of these minors are referred directly to DSS so that both the juveniles' and the parents' behaviors can be addressed.

Specific Problems with Implementation:

Because this subsection has not been utilized very much, there have been few problems in applying it. However, when the Legislature chose to create a special jurisdictional basis to deal with a juvenile being controlled by his parents in this way, it heightened the Court Intake office's responsibility to look at the conduct and involvement of parents or guardians in juvenile offenses. Though it has not surfaced to date, some people have expressed the fear that a juvenile offender might try to use this subsection to raise a defense to his delinquent acts and to try to surpress the petition for delinquency. Another issue that has been raised is whether the court must apply the delinquency standard of proof (beyond a reasonable doubt) in finding that a child has committed a delinquent act before it can file a child in need of aid petition under this subsection. If the answer is yes, then the court may first have to hold a delinquency adjudication hearing.

The ultimate extent to which this statute will be utilized depends upon the relationship between the Court Intake office and the office of the Division of Social Services. If the Court Intake office perceives that DSS can adequately deal with complex family problems where a juvenile's delinquent acts are caused in part by parental behavior, then a coordinated and effective system of referral can be developed between the offices. Every effort should be made to strengthen this relationship and DSS should be able to statistically identify and track referrals from the Court Intake office.

Statute 47.10.230(c)

As amended: (c) The department may receive, care for, and make appropriate placement of minors accepted for care for a period of up to six months on the basis of an individual voluntary written agreement between the minor's parent, legal guardian, or other person having legal custody and the department. The agreement may include provisions for payment, in whole or in part, to the department for the minor's care and treatment. The agreement entered into shall not operate to prohibit a minor's parent, legal guardian, or other person who had legal custody from regaining care of the minor at any time.

Examination of Change:

This statute was not amended in August, 1977. However, in talking with several people from DSS and the Department of Law, it was suggested that some changes were needed in this law.

General Impacts:

This statute gives DSS the authority to enter into a written agreement with a parent or legal guardian which allows DSS to take custody of a minor for up to six months. The parent or legal guardian can withdraw from the agreement at any time.

The voluntary agreement has proven to be an effective tool in responding to unusual family situations. Typically, this type of agreement is sought from a parent who is ill and going in the hospital, going out of town or possibly going through a difficult marital separation. It provides a short term solution to a situation where both the parent and a minor child need some stabilizing assistance.

In situations of severe abuse or neglect, the voluntary agreement has proven much less effective. For it to help resolve a problem of this nature between a parent and a minor child, the parent has to actually recognize the problem. In child protection cases, a voluntary agreement usually provides the parent with a time limit within which the parent must work on the sources of the problem and seek counseling if necessary. This places a fair amount of responsibility on the parent.

Problems with Application:

1) The tendency in the past has been to use voluntary agreements too often as a short term solution to cases needing child protection. Because it does not require court processing and can be entered into at the social worker's discretion, it has been a convenient and immediate way to respond to a problem. It is generally thought that it has too often been used inappropriately and has little usefulness in a normal abuse or neglect case. If the harm to the child could not be documented, the tendency was to utilize a voluntary agreement to take custody of the child and to convince the parents of the seriousness of the matter.

The obvious difficulties arose when the parents did nothing to work on the problem. It appears that DSS is presently using voluntary agreements much more sparingly in Anchorage. In cases of abuse and neglect, greater effort is being spent on gathering facts that can be used to support a petition for a child in need of aid. The amount of evidence, the nature of the problem, and the parents' attitude and cooperation are factors that now determine whether a voluntary agreement is entered into.

2) The voluntary agreement is entered into voluntarily by a parent or legal guardian, and it appears that the agreement can be terminated at will by the parent or guardian. This has caused problems for the state when a parent has changed his mind and wants the child back in the home. A problem has also arisen when the agreement is entered into by only the mother and then the father comes back to town and immediately demands custody of the child.

In these situations, the state is in the difficult position of having to release the child into an unknown and possibly dangerous home environment. It has been suggested that the statute should be amended to require a minimum of twenty-four hours notice to DSS by a parent, legal guardian or anyone else who desires to remove a child from a voluntary placement. This means that DSS could still release the child immediately if it was certain the home environment was not dangerous to the child. However, it would provide DSS up to twenty-four hours to investigate in cases where it is not clear whether the person's custody or home environment will be safe for the child. If necessary to protect the child, the state could take emergency custody under AS 47.10.142 at the end of the twenty-four hour period.

3) The voluntary agreement is thought to have little impact when the parent or legal guardian is uncooperative. Because there is no way to enforce it, parents often feel no compulsion to act on their written agreement to seek counseling to work on the problem. It has been suggested

that the voluntary agreement statute be amended to require the agreement to be entered into in court before a master or judge. Voluntary agreements used to be made in this manner and the court's presence had a real impact on the parents' efforts to improve their behavior. This also allowed the parents to stipulate to certain affirmative duties to resolve problems in the home in lieu of entering into a voluntary agreement.

4) The voluntary agreement statute as presently written seems to raise a few constitutional issues. The fact that a child can be taken out of the home for up to six months without being a party to the agreement seems to deny a child certain due process guarantees. In practice, most minor children do want the state to take temporary custody when DSS is considering a voluntary agreement.

However, there have been cases where a guardian ad litem argued that the agreement was not constitutionally valid because the minor had not consented to it. It is suggested that the statute be amended to require the consent of the minor and that the agreement be in the best interests of the minor.

Statute 47.10.081(b)

As amended: (b) Before the disposition hearing of a child in need of aid the department shall submit a predisposition report to aid the court in its selection of a disposition. This report shall include, but is not limited to, the following:

(1) a statement of changes in the child's or parent's behavior, which will aid the court in determining that supervision of the family or placement is no longer necessary;

(2) if removal from the home is recommended, description of the reasons the child cannot be protected or rehabilitated adequately in the home, including a description of any previous efforts to work with the parents and the child in the home and the parents' attitude toward placement of the child;

(3) a description of the potential harm to the child which may result from removal from the home and any efforts which can be made to minimize such harm; and

(4) any further information which the court may request.

Examination of Change:

This new subsection of the statute requires DSS to submit a predisposition report to aid the court in making a disposition of a child in need of aid. The statute requires that the report include an assessment of changes in the child's or parents' behavior, a description of reasons why the child cannot be protected at home, a description of the potential harm to the child if removed from the home and any additional information the court may request. This subsection should be read together with subsection (c) which requires that the report be made available to the child, parents and the attorneys not less than 10 days before the disposition hearing. These changes in the Children's Code are similar to subsection (a) relating to the new requirement of a predisposition report for a delinquent minor. They formalize in the statutes what had previously been done in the Anchorage Court for dependency proceedings and now make the required preparation of predisposition reports uniform throughout the state.

Legislative Intent:

The intent of this subsection was to require DSS to present documented information concerning the child's behavior, removal from the home, harm to the child and the parents' role in the treatment process. The intent behind requiring an assessment of the potential harm to the child if removed from the home and efforts that can be made to minimize that harm was obviously to force the state to consider the negative impacts of removing a child from the family and to require specific efforts be made to ensure that the parent-child relationship is not totally destroyed. Much more is required in a child in need of aid predisposition report because an assumption was made that dependency situations usually involve greater familial causes and family treatment involvement than the normal delinquency case. Subsection (c) requires the availability of the predisposition report so that persons directly involved in the child's case will be able to know the department's plans.

Extent to Which Change Implemented:

In almost every case, a child in need of aid predisposition report is being prepared for dispositional hearings in the Anchorage Court. The only exceptions occur when, as in delinquency proceedings, the adjudication and disposition of a case is held at the same hearing. The authority for this procedure again appears to be derived from Children's Rule 22 and it is most often exercised by the Children's Court Master rather than a Superior Court Judge. It may be that the uncontested and emergency nature of the case requires that an immediate dispositional order be made.

General Impacts of Change:

While predisposition reports were previously being prepared in most dependency cases before the Children's Code was changed, it is probably true that the reports now are being developed with more information and thought. According to the Attorney General's office in Anchorage, the predisposition reports submitted to its office are prepared differently by each social worker.

DSS has recently developed a form for predisposition reports which includes areas relating to the history of the case, the legal history, the potential harm in leaving the child in the home, contacts with the parents, the need for tests or psychological studies, and the social worker's recommendations. Apparently, a majority of the reports are sufficiently addressing the first two requirements of subsection (b), however, in many cases the "potential harm to the child if removed from the Home" is not fully addressed. Because the new statute places a heavier burden on the state in preparing predisposition reports, social workers are not typically used to evaluating harm to a child if actually taken out of the home.

Most efforts in child in need of aid cases are directed at protecting a child from being harmed in the home. It seems that if the intent of the new subsection (b) is to be realized more consideration needs to be given to establishing future harm to the child (or the child's feeling about the family) if taken out of the home and what affirmative steps can be taken to minimize that harm.

Presently, predisposition reports are being submitted to the Attorney General's office by social workers about 14 days before the scheduled disposition hearing. An assistant attorney general reviews the report and may require additional information before he submits the report to the court. Usually the predisposition report is made available to the court three to four days prior to the hearing.

Special Problems with Implementation:

As DSS begins to train its social workers with its new program manual, individual interpretations of what a predisposition report is to contain will be lessened and the reports may more consistantly address the requirements of the new statute. As long as the reports in Anchorage are carefully screened by the Attorney General's office, there should be few problems in presenting the report to the court.

Two areas where problems might arise deal with the availability of the reports to parents and the types of additional information that the court can request. First, it is critically important in child in need of aid cases, that the parents, their attorney and the guardian ad litem be notified of the time that the predispositon report can be made available to them. If the report is not available 10 days before the disposition hearing, then the court should take the necessary steps to ensure that the parties to the proceedings are not prejudiced by its unavailability and that the parties receive it as soon as it is available.

The court might also be more creative in terms of the additional information that it requires of social workers in their reports. If a child has special physical, mental, or even educational needs, the court could have them identified in the predispositional report to aid it in the disposition. The social workers treatment plan and recommendations should also reflect these special needs.

The court should be very diligent in its use of an immediate dispositional order in a child in need of aid adjudication proceeding. The criteria for immediate orders without the aid of a predisposition report should be examined carefully and made clear so that it is not abused. It would also be helpful to revise subsection (b) so that a predisposition report is not required when the court finds it necessary to issue an immediate order.

Statute 47.10.142

As amended: Emergency custody and temporary placement hearing. (a) The Department of Health and Social Services may take emergency custody of a minor upon discovering any of the following circumstances:

(1) the minor has been abandoned;

(2) the minor has been grossly neglected by his parents or guardian, as "neglect" is defined in AS 47.17.070(5), so that immediate removal from his surroundings is, in the determination of the department, necessary to protect his life;

(3) the minor has been abused, as "abuse" is defined in AS 47.17.070(1), so that immediate medical attention is necessary, in the determination of the department.

(b) A minor who has left home and is evading the person having legal custody of him may obtain the services of the department. The department shall assess the situation and furnish the minor with the social services it considers appropriate to protect the well-being of the minor and to preserve his family life if preserving it is considered desirable under the circumstances. If, after assessing the situation, considering the wishes of the minor, and furnishing appropriate social services, the department considers it necessary, the department may take emergency custody of the minor.

(c) When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child and the court of the action and file with the court a petition alleging dependency.

(d) The court shall immediately, and in no event more than 48 hours after being notified unless prevented by lack of transportation, hold a hearing at which the minor, if his health permits, and his parents or guardian, if they can be found, shall be permitted to be present. The court shall determine whether probable cause exists for believing the minor to be a dependent minor, as defined in 290(3) of this chapter. The court shall inform the minor, and his parents or guardian if they can be found, of the reasons given as constituting probable cause and the reasons given as authorizing his temporary placement.

(e) If the court finds that probable cause exists it shall order the minor committed to the department for temporary placement, or order him returned to the custody of his parents or guardian subject to the department's supervision of his care and treatment. If the court finds no probable cause it shall order the minor returned to the custody of his parents or guardian.

Examination of Change:

This statute was not amended in August, 1977, but in talking with several people it was suggested that certain parts of the statute need clarification.

General Impacts to Date:

Subsections (b) and (c) of this statute provide that a minor who has left home and is evading the person having legal custody of him may obtain the services of the Department of Health and Social Services through its Division of Social Services. DSS is to assess the situation and furnish the minor with the social services it considers appropriate. After this is completed, and considering the wishes of the minor, DSS may take emergency custody of the minor. If it does, DSS must notify the minor's parents within 12 hours, and file a child in need of aid petition with the court (also within 12 hours). Subsection (d) requires the court to hold a hearing within 48 hours of when it is notified to determine if probable cause exists for believing the minor to be a dependent minor.

Specific Problems in Application:

This statute gives DSS the authority to respond to a child seeking its assistance by providing that child with temporary shelter and care. Oftentimes a child comes or is brought to DSS in the middle of the night. The child is immediately provided with the services that are available at the Alaska Children's Services' Receiving Home or Family Connection in Anchorage. In Anchorage, the Police Department and the State Troopers are often the sources of juvenile referrals to DSS. Presently, Family Connection is under contract with the state to provide 24-hour crisis intervention and counseling services. According to the Anchorage Police Department, they no longer take juveniles needing social services directly to DSS. Instead, runaways and children determined to be in need of aid are taken to Family Connection Monday through Friday, between the hours of 8:00 a.m. and 12:00 a.m. Between the hours of 12:00 a.m. and 8:00 a.m., these juveniles are taken to the Alaska Children's Services' Receiving Home. On weekends, juveniles are taken to the Receiving Home unless someone at Family Connection notifies the Police that its services are available. During the first four months (September 1978-December 1978) of operation, the Family Connection crisis service provided services to 53 pre-runaway juveniles, 83 runaway juveniles, 13 abused juveniles and 3 neglected juveniles.

It usually takes DSS more than a full day to assess the child's home situation to decide whether to file a child in need of aid petition. DSS now makes the assessment on the basis of the Police report, the intake report from the Receiving Home or Family Connection, and a social worker's report.

According to the statute, the initial assessment and furnishing of services for the child must be done first before DSS can take emergency custody. In reality, DSS can do only a superficial assessment of the child's situation initially because of the urgency to provide food and shelter for the child. Once food and shelter are provided, emergency custody has been taken and DSS has the duty to immediately (within 12 hours) notify the parents and file a petition.

Problems arise because DSS has only 12 hours to investigate the actual need for filing a petition. While it may be that the child needed overnight social services, it does not necessarily follow that the state will find the situation so serious that it needs to file a petition to protect the child.

As presently written, this statute requires the filing of a petition by DSS to initiate a child in need of aid court proceeding. After a two day DSS assessment, many of these cases do not require a petition for child in need of aid.

It has been suggested that the statute be amended so as to clarify what services DSS can provide a child coming to it for assistance between the time the child comes to DSS and the time DSS makes the decision to take emergency custody. By stating that DSS can furnish a child with temporary shelter and food as "appropriate services" as those terms are used in the statute, DSS can legitimize what it is already doing in Anchorage prior to the decision of whether to take emergency custody.

However, if the only reasonable interpretation of DSS's furnishing overnight social services to a child is that DSS has in fact taken emergency custody, then the present 12 hour period for filing a child in need of aid petition appears to be too short. It has been suggested that the statute be amended to allow DSS a more reasonable period of time (48-72 hours) in which to assess whether the child is in a dangerous living situation and to file a petition with the court. DSS is in a difficult position under the present statute because if it provides a child services and thereby takes temporary custody, it is obligated to file a child in need of aid petition shortly thereafter.

Parents obviously have a strong interest in being notified of DSS's involvement and in having an opportunity to see the petition alleging that their child is in need of aid. DSS has a strong interest in protecting a child that seeks its assistance by providing temporary aid. But according to the statute, if it furnishes temporary aid which necessitates taking emergency custody, DSS must file a petition alleging a legal status (child in need of aid) that it has not had enough time to fully investigate.

DSS is sensitive to the fact that it has limited resources to make available. Some officials in DSS find it hard to justify the payment for temporary services provided to children when there is never a subsequent court order for child in need of aid or a voluntary agreement to legitimize the provision of services to these children.

Statute 47.10.290(9)

As amended: (9) "caring" under sec. 10(a)(2)(A) means to provide for the physical, emotional, mental, and social needs of the child.

Examination of Change:

This subsection defines the term "caring" as it is used in the child in need of aid jurisdictional statute 47.10.010(a)(2).

Legislative Intent:

The intent of the Children's Code Task Force in defining "caring" was to state in more specific terms what types of needs a parent or legal guardian is responsible to help provide for a child.

Extent to Which Change Implemented:

The definition of caring has been quite helpful to lawyers and the Children's Court Master in interpreting the duty of parents under the child in need of aid subsection. Under the previous dependency statute, a child could be found to be dependent if the parents were substantially unable to care for the child. The case law interpretation has been made more definite in giving the court a variety of needs to assess in determining whether a child is "in need of aid."

General Impacts of Change:

By defining caring as providng for the physical, emotional, mental and social needs of a child, the statute has given the court some clear points of reference to evaluate in a dependency proceeding.

Specific Problems with Implementation:

Some problems have been encountered in applying this caring standard by attorneys representing the parents in a child in need of aid proceedings. The argument has been presented that caring is defined too broadly and that a parent may have been providing for most of the needs of the child and yet still have a petition filed against him. The articulation of emotional, mental and social needs is elusive. However, the court's reaction to this has been to focus on the degree of caring being provided by a parent, taking all of the child's needs into account.

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Statute 47.10.083

As amended: REVIEW HEARING INFORMATION. In the case of a child in need of aid, the child shall be returned home at the review hearing under sec. 80(f) of this chapter unless the court finds by a preponderance of the evidence that the basis upon which the child was adjudicated under sec. 10(a)(2) of this chapter continues to exist. If the child is not returned home, the court shall establish on the record:

(1) why the child was removed from the home;

(2) what services have been provided to or offered to the parents to facilitate reunion;

(3) what services were utilized by the parents to facilitate reunion;

(4) the visitation history between the parents and the child;

(5) whether additional services are needed to facilitate the return of the child to his parents;

(6) when return of the child can be expected.

Examination of Change:

This statute is entirely new and it lays out what information must be gathered by the court in a review hearing, if the court decides that a child, under a child in need of aid order is not to be returned home. That hearing may be the annual review hearing under 47.10.080(f) or possibly a hearing for a two year extension of state supervision under 47.10.080(c)(1) & (2). In either case, the court must examine the services that have been provided to the parents, the visitation history, and other pertinent conditions aiding the court to evaluate DSS's efforts to reunite the child and the family. The court must find by the preponderance of the evidence that the basis for the original child in need of aid petition continues to be present.

Legislative Intent:

The intent of this statutory change was to have as many children previously adjudicated in need return to their homes at the earliest possible date. The burden is placed on the state to show why it should retain custody over a child. The statute was also intended to ensure that a good history of the child's case is maintained for subsequent proceedings.

Extent to Which Change Implemented:

The Division of Social Services has recently developed a report form for the review of a child in need of aid case. This form covers all of the requirements under 47.10.083 and also requires the submitting social worker to comment on the child's progress while in custody and any recommendations that can be made. These reports are being submitted to the Master of Children's Court for review but there are no annual review hearings being held.

General Impacts of Change:

The impacts of this new statute include changes in the form and content of a social worker's annual review report to the court. Because full due process hearings are not being held in Anchorage, the state may not have any greater burden in retaining custody of a child in need of aid after the first year under the court's order. However, it may be that in areas of the state where hearings are being conducted, the state's burden has been significantly affected by the new statute.

Special Problems with Implementation:

Besides the problems the court is having in not holding annual review hearings, it appears that the court faces a potential problem more demanding of its resources. Under 47.10.080(c)(1) and (2), the state may petition the court and the court can grant in a hearing an extension of an original two year child in need of aid commitment. This means that when the new Children's Code went into effect on August 26, 1977, all those children adjudicated under the old dependency statute were no longer subject to an indeterminate length of commitment to state custody up to 19 years of age.

Instead, they became subject to the two year maximum length of commitment under the new statute. Consequently, the state is facing the prospect of having to petition the court for an extension of commitment on August 26, 1979, for all those children adjudicated under the old dependency statute. It has been suggested that there is no way the Anchorage Court can readjudicate all of these cases. For the hearings to be held, guardian ad litems will have to be appointed, parties will have to be notified of the hearings, the court and DSS will have to schedule the time, and other resources will have to be mustered.

It is critically important that court and state agency personnel begin to plan for these hearings. DSS has already initiated plans to stagger these hearings over a six-month period of time, starting in May, 1979. Other areas of the state should give serious consideration to the most effective means of providing these hearings.

One question that need further research concerns the extent to which an annual review is done for juveniles placed under child in need of aid orders in out-of-state facilities. The DSS office in Anchorage has in the immediate past placed adjudicated child in need of aid children in Oregon and Colorado treatment facilities. The figures for the total number of dependent

Southcentral juveniles presently in Lower 48 institutions was not available. However, it appears that annual reviews for those dependent juveniles are based exclusively on the periodic progress reports submitted by the institutions to Alaska DSS personnel. A series of these progress reports is used to develop an annual review report for the court. Once again a hearing is not being held at the time of review and DSS does not have the resources to make the kind of on site visits to out-of-state facilities that the Division of Corrections does. Some thought should be given to developing ways of improving the quality of DSS annual reviews for juveniles in out-of-state institutions. Because both DSS and DOC utilize the Excelsior Youth Center in Colorado, DSS annual reviews could be coordinated to take advantage of biannual DOC out-of-state classification committee visits to that facility.

Statute 25.20.010

As amended: Age of majority. A person is considered to have arrived at majority at the age of 18 years, and thereafter has control of his own actions and business and has all the rights and is subject to all the liabilities of citizens of full age, except as otherwise provided by statute.

Examination of Change:

This statute reduced the age of majority in the State of Alaska from 19 to 18 years of age. This has the effect of giving all the rights and responsibilities of adulthood to a young person at age 18, the age of majority. However, the age limits in the alcoholic beverage, commercial labor, education, motor vehicle and juvenile court laws were not changed.

Legislative Intent:

The Children's Code Task Force felt that if a person at 18 is responsible enough to be allowed to vote or be subject to military duty, then he should also be accorded the rights and responsibilities which attach at the age of majority, including the right to choose one's domicile, the right to contract, the right to sue and be sued, etc.

Extent to Which Change Implemented:

The lowering of the age of majority to 18 has very slowly come to the attention of minors, parents and those agencies and officials that deal with minors. For example, some schools in the Anchorage School District have uniformly required a written excuse from a parent of a child who is absent from school. These high schools have been requiring excuses signed by parents of 18 year old students even though those 18 year olds now have the legal right to sign their own excuses. It was not until one 18 year old student protested the need for his parents' signature on an excuse that one of the schools became aware of the lowering of the age of majority.

Because there is no adequate process to disseminate information on legislative changes that impact children, it is not surprising that many children, parents, and other adults remain misinformed about the present age of majority.

Special Problems with Implementation:

While the lowering of the age of majority has not had a significantly measurable impact, there have been some questions of whether the age of majority or emancipation before the age of 18 affects the juvenile court's jurisdiction over young people. It in no way influences the fact that the juvenile court's jurisdiction over a young person extends up until age 18. However, it has been suggested that some people are in favor of lowering the age for juvenile court jurisdiction to 16 in order to deal with a number of more sophisticated 16 and 17 year olds who are committing serious offenses.

The lowering of the age of majority to 18 has had some impact on those juveniles that are in the custody of the state. A delinquent juvenile or a child in need of aid who is placed in a group home or secure facility may reach the age of 18 while in state custody. For this reason, facility administrators should be aware of the fact that juveniles who do reach the age of majority acquire certain rights and privileges that must be acknowledged and respected.

Even though the age of majority is now 18, some Anchorage hospitals are requiring the consent of a parent before giving non-emergency treatment to a young person under the age of 19. Consequently, hospital treatment policy in certain cases does not reflect the August, 1977 change in the age of majority.

Statute 9.55.590

As amended: REMOVAL OF DISABILITIES OF MINORITY. (a) A minor who is a resident of this state and is at least 16 years of age, who is living separate and apart from his parents or guardian, capable of self-support and of managing his own financial affairs, may petition the Superior Court to have the disabilities of minority removed for limited or general purposes.

(b) A minor may institute this petition under this section in his own name.

(c) The petition for removal of disabilities of minority must state:

(1) the name, age, and residence address of the petitioner;
(2) the name and address of each living parent;
(3) the name and address of the guardian of the person and the guardian of the estate, if any;
(4) the reasons why removal would be in the best interest of the child; and
(5) the purposes for which removal is sought.

(d) The petitioner must obtain the consent of each living parent or guardian having control of the person or property of the petitioner. If the person who is to consent to the petition is unavailable or his whereabouts are unknown, or if a parent or guardian unreasonably withholds consent, the court, acting in the best interest of petitioner, may waive this requirement of consent as to that parent or guardian.

(e) The court may appoint an attorney or a guardian ad litem to represent the interests of the petitioner at the hearing.

(f) The court may remove the disabilities of minority as requested in the petition if found to be in the best interest of the petitioner, after a hearing. The removal may be for general purposes or the limited purposes specified in the decree.

(g) Except for specific constitutional and statutory age requirements for voting and use of alcoholic beverages, a minor whose disabilities are removed for general purposes has the power and capacity of an adult, including but not limited to the right to control himself or herself, the right to be domiciled where he or she desires, the right to receive and control his or her earnings, to sue or to be sued, and the capacity to contract.

Examination of Change:

This statute was not changed with the 1977 amendments to the Children's Code. It was last revised in 1976 to assist a significant percentage of Alaskan youth, who are appropriate for emancipation, to remove the legal constraintsof their minority. The statute is a very necessary one for many young people who are living separate and apart from their parents or guardian but have not yet reached the age of majority (18).

General Impacts of Change:

The statute was included in this research project because knowledge of the state's emancipation process is critically important to the functions and duties of social workers, probation officers, and others who work in the juvenile justice system. Even though the statute has been in effect for over two years, it does not appear that many juvenile justice practitioners have thorough understanding of the criteria for eligibility or the procedures for emancipation.

Because of the serious consequences that result from cutting off parental responsibilities for a juvenile, and from extending to a 16 or 17 year old youth certain legal rights and responsibilities, emancipation must be thought through carefully before pursuing. The basic requirements are that the youth must be a resident of Alaska (this means the parents or legal guardian must be living in Alaska), be at least 16 years old at the time of petitioning, be living separate and apart from his parents or guardian, and be capable of self-support.

A hearing is required on the petition and parental consent is necessary unless the Judge or Court Master finds that it can be waived. The court may appoint a lawyer or a guardian ad litem to represent the petitioner at the hearing.

In Anchorage, the process for emancipating a minor operates as follows. A minor, meeting the requirements of the statute or his legal representative files the petition along with suporting affidavits with the clerk of the Anchorage District Court. A non-refundable fifty dollar filing fee is charged. A hearing is scheduled during the next few weeks at a time convenient to all parties. The Anchorage Divorce Master usually presides at the hearing unless the emancipation petition is contested by the parents. On the basis of the petition, affidavits, and testimony taken at the hearing, the Master will decide whether to approve or deny the petition.

Special Problems with Implementation:

The primary problems associated with the emancipation statute relate to the lack of a mechanism to assist minors who meet the requirements of the statute. While the court system provides a very thorough information and interviewing process for the marriage of a minor, it does not provide a similar process for emancipation. Consequently, there has been a lack of information about the statute and a good deal of confusion among minors, parents, and adults working with youths as to which minors fall within the statute. To make matters worse, the statute has been placed in Title 9 of the statutes which detail the Alaska Code of Civil Procedure. For this reason, it has been relatively difficult for most people (even some practicing attorneys) to locate the statute. From a statistical standpoint, the last emancipation proceeding in the Anchorage Court was held in April, 1978. Since that date, there have been no emancipation petitions filed or hearings conducted in Anchorage.

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Statute 9.65.100

As amended: EXAMINATION AND TREATMENT OF MINORS. (a) Except as prohibited under AS 11.15.060(a)(3). (1) a minor who is living apart from his parents or legal guardian and who is managing his own financial affairs, regardless of the source or extent of his income, may give consent for medical and dental services for himself;

(2) a minor may give consent for medical and dental services if his parent or legal guardian cannot be contacted, or if contacted, is unwilling either to grant or withhold consent; however, where the parent or legal guardian cannot be contacted or, if contacted, is unwilling either to grant or to withhold consent, the provider of medical or dental services shall counsel the minor keeping in mind not only the valid interests of the minor but also the valid interests of the parent or guardian and the family unit as best the provider presumes them;

(3) a minor who is the parent of a child may give consent to medical and dental services for himself or his child;

(4) a minor may give consent for diagnosis, prevention or treatment of pregnancy, and for diagnosis and treatment of venereal disease;

(5) the parent or guardian of the minor is relieved of all financial obligation to the provider of the service under this section.

(b) The consent of a minor who represents that he may give consent under this section is considered valid if the person rendering the medical or dental service relied in good faith upon the representations of the minor.

(c) Nothing in this section may be construed to remove liability of the person performing the examination or treatment for failure to meet the standards of care common throughout the health professions in the state or for intential misconduct.

Examination of Change:

This statute was not changed with the 1977 amendments to the Children's Code. It was last revised in 1974 in order to clarify the legal rights of minors who are seeking to be examined and treated for medical or dental purposes. It also clarified the responsibilities of providers of these medical and dental services.

The statute was included in this research project because of the importance of this legal information to minors (anyone under 18), physicians, dentists, police officers, legal custodians, public health employees, hospital personnel, and others.

Subsection (a)(1) gives a minor who is living an emancipated lifestyle the right to consent to medical and dental services for himself. Thus, if a minor is living on his own and managing his own affairs, then his consent should be adequate in order to receive medical treatment. Regardless of this statute, minors emancipated by an Alaskan Court according to AS 9.55.590 or emancipated by marriage automatically have the right to consent to medical treatment and examination. Subsection (b) provides that if the provider of services relies in good faith on a minor's representation that he is living apart from his parents and is managing his own financial affairs, then the consent is valid. This statutory language protects doctors who rely on a minor's representations. The statute was intended to give minors in an emancipated status authority to obtain essential medical services on their own. In theory, if a minor goes to Providence Hospital to have a broken bone set, and the minor is living apart from his family and is handling his own financial matters, he has the right to consent to the services without needing parental approval.

Subsection (a)(2) gives any minor, regardless of circumstances, the right to consent to medical and dental services without parental approval if the parent cannot be contacted by the provider or if contacted, the parent is unwilling to give approval. The statute places on the providing doctor or dentist the responsibility of trying to contact the parents of a minor who is not living apart from his parents or legal guardian. This is to be done prior to treatment or examination. The provider is to balance the interests of the minor in receiving treatment with the interests of the parents (which may include financial or religious considerations). However, subsection (a)(5) relieves the parent of a minor receiving examination or treatment under this statute of all financial obligations to the provider so parents are not automatically liable for the costs incurred.

In two other cases, minors can give consent to treatment without the need for parental approval or even parental contact with the provider. Subsection (a)(3) gives a minor who is the parent of a child the right to consent to medical and dental services for himself and his child. Subsection (a)(4) gives any minor the right to consent to the diagnosis, prevention or treatment of pregnancy and treatment of venereal disease. While this subsection was originally qualified by AS 11.15.060(a)(3) which limits abortions to women over 18, recent U.S. Supreme Court decisions have expanded the right to obtain an abortion during the first three months of gestation to women of all ages. In 1976, the U.S. Supreme Court held that states may not constitutionally require the consent of a girl's parents as a condition for abortion during the first 12 weeks of pregnancy. In effect, the court found unconstitutional any state law that grants a parent the right to "veto" the decision made by a physician and minor patient to terminate pregnancy, regardless of the reason of the parents for withholding consent. The court's ruling applies not just to parents but to all adults who exercise custody of children such as foster parents, guardians, or institutional personnel in long term child care facilities. In light of these court decisions, AS 11.15.060(a)(3) could be considered unconstitutional as violating a pregnant minor's right to privacy and equal protection of the law under the U.S. Constitution.

In summary, minors in Alaska have the right to consent to being examined and treated for venereal disease, examined and given birth control devices, and examined and treated for pregnancy. Although the Alaska abortion statute remains unchanged, court cases clearly give a minor the right to consent to an abortion within the first 12 weeks of pregnancy, without the need for parental approval.

Specific Problems with Implementation:

While this statute was intended to clarify the circumstances under which a minor can acquire different kinds of treatment, there are serious problems in how the statute has been applied in Anchorage. One of the problems concerns the fact that all of the hospitals in Anchorage have different policies for treating unemancipated minors (not emancipated by court order) in non-emergency situations. Because of this, unemancipated minors are having a difficult time obtaining non-emergency treatment at hospitals on the basis of their own consent. Alaska Hospital has developed the policy that all young people, under 18, need to have the consent of a parent or legal guardian to receive treatment unless is is an emergency.

The Anchorage Police Department finds that hospital policies oftentimes can delay the treatment of a minor who is brought to the hospital at night in police custody. If the minor's parents cannot be contacted, then the hospital usually requires that the minor be in the legal custody of DSS or McLaughlin, or that a court order authorizing the treatment be obtained. In the past, a hospital has made a telephone call to the night duty judge and received verbal authorization to treat a minor. However, the Anchorage Court has recently changed this administrative policy and the duty judge is no longer to be contacted for this purpose.

The hospital will usually not accept the signature of the police officer involved. The hospital's concern for its liability and the probability of receiving payment for its services may be causing the implementation of policies which frustrate the intent of this treatment statute. A major reason for the apparent conflict between hospital policies regarding the treatment of minors and AS 9.65.100, could be a simple lack of knowledge about the statute's existence. A medical records employee of one hospital in Anchorage had been completely unaware of the statute and has requested the attorney for the hospital to research its impact on the hospital's treatment policy for minors. This situation underscores the point that some children's statutes (i.e. emancipation, treatment and examination) are essentially hidden or buried in various titles of the Alaska statutes. The result is that the statutes are often overlooked and their legislative intent is thereby frustrated.

The real impact is being felt by young people. In most cases, if a juvenile arrested by the police appears injured, sick or high and the cause is not apparent or the result of drugs, the McLaughlin Youth Center will not accept the juvenile into its detention unit until he has been seen by a doctor. Present hospital policies have made it difficult for some juveniles to be examined because of the delay and difficulties in obtaining parental consent.

Juveniles who are actually victims of crimes have also been adversely affected. In one recent case, a 16 year old girl living apart from her separated parents was the victim of an assault and sought treatment at a local hospital. Despite the fact that her consent alone was sufficient according to 3.65.100(a)(1), the hospital delayed treatment until her parents could be contacted.

Statute 47.10.140

As amended: Temporary detention and detention hearing. (a) A peace officer may arrest a minor who violates a law or ordinance in his presence, or who he reasonably believes is a fugitive from justice. A peace officer may continue a lawful arrest made by a citizen. He may have the minor detained in a juvenile detention facility if in his opinion it is necessary to do so to protect the minor or the community.

(b) A peace officer who has a minor detained under (a) of this section shall immediately, and in no event more than 12 hours later, notify the court, the minor's parents or guardian, and the Department of Health and Social Services of the officer's action. The department may file with the court a petition alleging delinquency before the detention hearing.

(c) The court shall immediately, and in no event more than 48 hours later, hold a hearing at which the minor and his parents or guardian if they can be found shall be present. The court shall determine whether probable cause exists for believing the minor to be delinquent. The court shall inform the minor of the reasons alleged to constitute probable cause and the reasons alleged to authorize his detention. The minor is entitled to counsel and to confrontation of the witnesses against him.

(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in detention or order him to be released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case.

(e) Except for temporary detention pending a detention hearing or temporary detention under (f) of this section, no minor may be detained except by court order.

(f) A peace officer may detain a minor who is evading the person having legal custody of him if the minor is not otherwise subject to arrest or detention under (a) of this section, for the sole purpose of either (1) returning the minor to the person having legal custody of him or (2) if the minor prefers, taking him to an office specified by the Department of Health and Social Services, facility or contract agency of the Department of Health and Social Services where such exists in the community. Immediately upon detaining a minor under this provision, the peace officer shall advise him of his right to social services under 142(b) of this chapter, and, if known, the peace officer shall advise the person having the legal custody of the minor of his detention.

(g) No minor who is detained under (f) of this section may be detained in a jail or other facility unless kept out of contact with adult persons convicted or accused of a crime. No minor may be detained in a jail or other detention facility which has not been approved by the Department of Health and Social Services before detention of the minor.

Examination of Change:

This statute was not changed with the August, 1977 amendments to the Children's Code. It is, however, one of the most important statutes directly impacting Alaskan juveniles because it contains the criteria upon which a juvenile may be temporarily detained by a peace officer. Though the statute was not amended in 1977, its application has been significantly affected by the repeal of AS 47.10.010(a)(2),(3) and (6) and AS 47.10.290(7).

Subsection (a) of this statute gives a peace officer authority to arrest a juvenile and have that juvenile detained in a juvenile detention facility.

Subsection (b) requires a peace officer to immediately notify the court, the juvenile's parents or guardian, and the Department of Health and Social Services of a juvenile's detention.

Subsection (c) requires the court to hold a hearing within 48 hours of a juvenile's detention to determine whether probable cause exists for believing the juvenile to be delinquent. Subsection (d) requires the court to determine (after establishing that probable cause exists) whether the juvenile should be detained pending the hearing on the delinquency petition or released.

Subsection (f) gives a peace officer authority to detain a juvenile who is evading the person having legal custody of him even if the juvenile is not otherwise subject to arrest or detention. A peace officer must advise the juvenile of his right to social services under AS 47.10.142(b), and if known, the officer must notify the person having the legal custody of the juvenile of his detention.

Subsection (g) prohibits the detention of a juvenile in a jail or other facility unless he is kept out of contact with adult persons convicted or accused of a crime.

Extent to Which Implemented:

Subsection (a) and (b):

These sections of the statute must be read together with Children's Rule 6 and 7(a). Rule 6 states that a peace officer may take a juvenile into temporary custody without an order of the court only when

1) A lawful arrest is made.
2) The juvenile violates a law or ordinance in the presence of the peace officer.
3) The peace officer reasonably believes the juvenile to be a fugitive from justice.

4) The peace officer continues a lawful arrest made by a private citizen.

Rule 7(b) states that the question of the detention or release of a juvenile pending a hearing is governed by one of the following reasons:

1) Detention is necessary to protect the juvenile from others.
2) The juvenile will not be available for subsequent court proceedings.
3) The juvenile will cause harm to himself or to others if he is not detained.

From a practical standpoint, a peace officer exercises a certain amount of discretion under subsection (a) and Rules 6 and 7. If a juvenile is investigated by an Anchorage police officer who determines that a formal charge is not necessary, the officer may handle the matter as a "police problem." This is usually the case when the juvenile is under twelve, it is a minor offense, there is no pattern of serious delinquent behavior, and the parents can effectively handle the situation. Since July 26, 1978, the Anchorage Police Department has handled 86 juveniles as police problems. In the more typical juvenile case, where detention is not necessary, a patrolman will release the juvenile to the parent or guardian, and refer the matter to the Police Department's Juvenile Bureau. A report is subsequently sent to the Juvenile Intake Officer.

However, a substantial number of juveniles are detained by peace officers. Once a lawful arrest has been made, an officer determines that one or more of these justifications for detention set out in Rule 7(b) are present. The officer has the legal duty to immediately notify the parents, guardians or custodian of the juvenile. Many juveniles are placed temporarily in detention because a peace officer determines that there is a failure to assure the juvenile's appearance in court because the parents cannot be contacted.

The normal process by which a peace officer detains a juvenile in Anchorage (under subsection (a)) involves transporting the juvenile to the McLaughlin Youth Center. An Anchorage police officer is under no obligation to first bring a detained juvenile to the police station. This very rarely occurs, especially between the hours of 6:00 p.m. and 8:00 a.m. Before making the decision to detain or release a juvenile, a peace officer always checks to see if the juvenile's name appears on the court's computerized warrant or "pickup" list.

Upon arriving at McLaughlin, the peace officer fills out a "Request for Detention" form (Appendix C) which authorizes placing the juvenile in the facility's detention unit. McLaughlin will not accept a juvenile who appears injured, sick, or high and the cause is not apparent or the result of drugs, until he has been seen by a doctor (see a discussion of the problems in obtaining the examination and treatment of juveniles AS 9.65.100).

If a juvenile is detained late at night or early in the morning, he is placed in a single room for the night, and has access to a shower and sack lunches.

The detention and admission form previously mentioned requires the committing peace officer to identify the reason for detention and to state the offense committed. Three copies of the form are made. The original is given to McLaughlin; the second copy goes to the Court Intake office; and the third copy accompanies the arresting officer's report. The arresting officer's report is completed either the same day, or the following day after a night detention. A Court Intake officer comes out to McLaughlin each week day morning to review the previous night or weekend's juvenile detentions. This is sometimes accomplished over the telephone.

In 1978, there were 315 juveniles detained in the McLaughlin detention unit who were subsequently released without being arraigned within 48 hours in court on a delinquency petition. This is presently accomplished when a Court Intake officer signs a detention release authorization. 14% of these juveniles were detained less than 12 hours, 23% were detained less than 24 hours, and 62% (196) detained greater than 24 hours. The offenses listed on the Request for Detention forms for these juveniles included:

Assault - 8%
Carrying a concealed weapon - 2%
Shoplifting - 19%
Trespassing - 5%
Destruction of property - 2%
Drugs - 11%
Alcohol - 1%
Burglary in a dwelling - 7%
Burglary not in a dwelling - 1%
Larceny - 14%
Receiving and concealing stolen property - 2%
Disorderly conduct - 9%
Joyriding - 6%
Curfew - 8%
Miscellaneous - 5%

24% (76) of the juveniles that were temporarily detained without being arraigned were age 13 or younger.

There were a total of 1,079 juveniles detained in McLaughlin during 1978 for periods of time less than 30 days. This figure includes the 315 juveniles who were held less than 48 hours and not arraigned. The remaining 764 juveniles were either subsequently arraigned and released or had their detention continued until adjudication and possibly disposition.

Subsection (c) and (d):

These sections of the statute mandate that the court immediately, and in no event more than 48 hours later, hold a detention review hearing. Both the juvenile and the juvenile's parents (if available) must be present. The juvenile is entitled to counsel and can cross examine witnesses at the hearing. The court must determine if probable cause exists for believing the juvenile to be delinquent. If it is found to exist, the court must also determine whether the juvenile should be detained pending the hearing (adjudication) or released.

Children's Rule 7(b) further explains the court's responsibilities when a juvenile is detained. The Rule requires the court to hold a detention inquiry not more than 48 hours after a juvenile is taken into custody (detained). Read together, the statute's requirement for a detention hearing and the Rule's requirement for a detention inquiry appear to be the same. If detention is not warranted, sections (d) and (e) of Children's Rule 7 authorize the court to release a juvenile to the person having lawful custody or to a responsible person, organization or agency approved by the court upon a written promise to produce the juvenile before the court at a subsequent proceeding. If the juvenile is not released, he may be placed in a detention facility, a foster home, or other shelter facility. Section (g) of Rule 7 states that where a juvenile has been detained for a period of 30 days, the detention shall automatically be terminated unless the court makes written findings supporting an order for continued detention. These findings are usually made at a continued detention hearing and must be reviewed and approved by the presiding judge of the Superior Court.

In practice, the issue of further detaining a juvenile at the court's detention hearing usually turns on whether the juvenile is dangerous to himself or others. This is not easy to establish unless the offense committed is particularily serious. The majority of juveniles are released into the custody of their parents. However, if the parents feel that they have no control over the juvenile, then there may be no choice for the court but to continue to hold the juvenile in detention. The chances of being released from detention are normally much higher if a juvenile is represented by an attorney.

Subsection (f):

This section of the temporary detention and detention hearing statute gives a peace officer the authority to detain a juvenile who is evading the person having legal custody of him even if the juvenile is not otherwise subject to arrest or detention. An Attorney General's memorandum dated July 14, 1977, has interpreted a peace officer's responsibilities under this statute as, 1) detaining the juvenile for the sole purpose of either returning the juvenile to the person having legal custody or if the juvenile prefers, 2) taking him to an office or contract agency of the Department of Health and Social Services. A peace officer 3) must advise the juvenile of his right to receive social services. 4) The officer must also notify the person having legal custody of the minor's detention.

In practice, a peace officer cannot force a juvenile to return home if the juvenile refuses, nor can he detain the juvenile for a period of time longer than necessary to get the juvenile into contact with the Division of Social Services if the juvenile refuses to go home. DSS then has the duty to assess the juvenile's situation, consider the juvenile's wishes, furnish appropriate social services, and determine whether emergency custody is necessary (AS 47.10.142(b)).

Presently the Anchorage Police Department's juvenile procedures require all peace officers to comply with this statute. An officer apprehending a runaway must check with the McLaughlin Youth Center to see if a child commitment order is in effect. He generally also checks to see if a warrant to take the juvenile into custody has been issued by the court.

Upon advising a juvenile of his right to social services, a peace officer is to allow the juvenile to make the choice between going home or going to a designated DSS emergency receiving home. If the runaway refuses to go home because of abuse or neglect, an investigation and police report must be made, and subsequently forwarded to the Division of Social Services.

General Impacts and Special Problems:

1) Subsection (a) gives a peace officer the authority to arrest and detain a juvenile. Several concerns have been expressed about the difficult position a peace officer is placed in with respect to juveniles. Though an officer is charged with the responsibility of enforcing the laws, he often finds himself in the role of a social worker trying to learn if a juvenile is delinquent, in need of social services, running away, posing a danger to himself or the community, in need of medical care, or in need of protection from others. These types of inquiries are supposed to be part of an officer's general evaluation of a juvenile's status and they can be very time consuming. Responsibilities for contacting a juvenile's parents or obtaining medical treatment for a juvenile can involve a substantial amount of time away from an officer's street patrol. Some officers feel frustrated by the demand that juvenile case involvement places on them and have a general misunderstanding about why juveniles are to be handled differently than adults.

Some of this frustration could be reduced if more training in the philosophy and objectives of the juvenile justice system frequently was given to peace officers.

There exists some confusion between subsection (a) and (b), and Children's Rule 7(b) over the specific criteria peace officers are to use in deciding whether to detain a juvenile. The statute says that a peace officer can detain a minor only if necessary to protect the minor or the community. Rule 7(b) specifies that the court's detention inquiry can result in the detention of a juvenile only if necessary to protect the juvenile from others, to prevent the juvenile from harming himself or others, or to assure that the juvenile will be available for subsequent court proceedings. No where in the statute is authority given to a peace officer to detain a juvenile in a detention facility to assure that the juvenile will be available for subsequent court proceedings. No where in the statute is authority given to a peace officer to detain a juvenile in a detention facility to assure that the juvenile will be available for subsequent court proceedings.

Nevertheless, the police routinely use this as their primary reason for having a juvenile detained at McLaughlin. In 1978, 47% (148) of the 315 juveniles who were detained for less than 48 hours were admitted to detention at McLaughlin because of a failure to assure their court appearance. 25% were admitted for protective custody and 19% were admitted for public protection. 10% (31) of the juveniles were admitted to detention without any basis for detention being identified on their admission form.

For whatever reason, a problem arises when either no effort is made by a peace officer to contact a juvenile's parents (maybe out of frustration or lack of time), or the parents or legal guardian actually cannot be located after reasonable attempts have been made. If a juvenile who is arrested at night by a peace officer does not know where to find his Mom and Dad, then the officer has no responsible adult to whom to release the young person. The juvenile is placed in detention at McLaughlin because of the convenience and the necessity of having some place to take him. Unfortunately, there are very few shelter care facilities in Anchorage which could provide crisis intervention services and an alternative placement in this type of situation. It is possible that many of the 315 juveniles who were detained at McLaughlin for less than 48 hours in 1978 without being arraigned, were detained because of insufficient attempts to contact their parents or guardian, or the parents or guardian were unavailable.

Another concern that was expressed with regard to subsections (a) and (b) is that although a peace officer may have the legal authority to detain a juvenile at McLaughlin, a Court Intake officer may not have the authority from the statutes or the Children's Rules to authorize the release of a minor from detention. This issue has not been thoroughly researched, however, AS 47.10.040 could possibly be interpreted to give an intake officer that authority.

2) Subsection (d). This subsection of the statute requires the court to hold a hearing to determine whether a juvenile should be detained pending the hearing on a delinquency petition or released. If a juvenile is detained as a result of the hearing, Children's Rule 7(g) automatically terminates a juvenile's detention after a period of 30 days unless the court issues an order for continued detention. Because of the 30 day limit on the time a juvenile can spend in detention, the Anchorage Court has usually scheduled all dispositional hearings for juveniles in detention, for 30 days from their adjudication hearing. Consequently, a detained juvenile might spend a minimum of a full month in detention awaiting a disposition hearing. While some cases may require additional time to prepare a very involved psychological examination and testing of a juvenile before a disposition can be made, certainly the majority of juveniles do not fall into this category.

Statistics from the McLaughlin Youth Center's detention unit indicate that some juveniles detained at their adjudication hearing, spend a considerably longer period of time awaiting the disposition of their case. In 1978, a total of 87 juveniles spent approximately 30 days in detention waiting for a disposition hearing. 34 of these juveniles spent more than 30 days in detention after their adjudication hearing awaiting disposition. 13 of these young people were from the Anchorage area and 11 of the 13 had their detention continued in a hearing in the Anchorage Court. For 2 of the juveniles, there apparently is no record at McLaughlin of a hearing being held to continue their detention beyond 30 days. These 2 juveniles were in detention 35 and 55 days. The majority of detention continuances were ordered to allow for additional diagnostic work or investigation, with only one being ordered because of a waiver appeal.

21 of the juveniles spending more than 30 days in detention after their adjudication hearing awaiting disposition were non-Anchorage young people.

Kenai Court		Bethel Court		Nome Court		Kotzebue Court		Kodiak Court	
Kenai	3	Bethel	2	Nome	5	Kotzebue	3	Kodiak	2
Soldotna	1	Sleetmute	2	Gambell	1				
Kasilof	1	Kalscag	1						
	5		5		6		3		2

Continuances of detention were issued by these courts in 19 of the juveniles' cases. For 2 of the juveniles (one from the Bethel Court, the other from the Nome Court) there apparently is no record at McLaughlin of a hearing being held to continue their detention beyond 30 days. These 2 juveniles were in detention 60 and 35 days, respectively. The primary reasons given for the courts in continuing detention in these cases were once again the need for additional diagnostic work or further investigation.

3) Subsection (f). This subsection authorizes a peace officer to detain a minor who is running away for the sole purpose of either returning the minor to the person having legal custody of him or if the minor prefers taking him to an office, facility or contract agency of the Department of Health and Social Services. Immediately after detaining a minor under this statute, a peace officer must advise the minor of his right to social services under AS 47.10.142(b).

Up until the passage of the 1977 amendments to the Children's Code, AS 47.10.010(a)(2),(3) and (6) provided the court with the authority to adjudicate a minor a child in need of supervision. These subsections gave the court, and therefore the police, jurisdiction over a minor who was habitually truant from school or home (running away), endangering the health, morals, or welfare of himself or others, or being beyond parental control. In 1976, there was a total of 102 child in need of supervision offenses (so called status offenses) referred to the Juvenile Intake office in the Third Judicial District. This was an average of 8.5 per month. In 1977, up until the statute was amended, 96 child in need of supervision offenses were referred to the Juvenile Intake office. This was an average of 12 per month.

The child in need of supervision jurisdiction was dropped out of the statute in August, 1977, and the new child in need of aid jurisdiction was created. While no attempt is made here to fully analyze the impacts of this change in the law, some observations can be made. Both the Children's Court Intake office and the police department in Anchorage feel that the loss of the child in need of supervision jurisdiction has significantly affected their ability to deal with juveniles who run away from home. The juveniles who were previously referred to the Intake office for being habitually truant from home, are now only seen if they have committed a delinquent offense.

The Division of Social Services has jurisdiction under AS 47.10.010(a)(2)A to provide services to a juvenile who is habitually absent from home or refusing available care (see discussion of this on pages 64-70). The Division of Social Services in Anchorage has been frustrated in its attempts to work with juvenile runaways who do not desire its assistance and has developed a policy for dealing with these juveniles (see Appendix K).

The Anchorage Police Department has developed juvenile procedures which direct police officers to carry out their responsibilities in compliance with AS 47.10.140(f). Up until September, 1978, police officers were taking detained juveniles to a DSS contracted receiving home in Anchorage if they did not want to be taken home. There is no authority presently under Alaska statutes to detain a runaway in a secured facility unless a criminal offense has been committed. Beginning in September, 1978, Family Connection, a private non-profit agency in Anchorage, began providing

24 hour crisis intervention services. The Anchorage Police Department has amended its juvenile procedures under an agreement with Family Connection so that runaway juveniles picked up by police between the hours of 8:00 a.m. and 12:00 p.m. Monday through Friday, are brought to the Family Connection offices if the juvenile does not want to go home. Runaway juveniles picked up at other hours or on weekends, continue to be taken to one of the receiving homes.

Despite these procedures for handling runaway juveniles, a good deal of frustration has been expressed by the police about the juveniles who continue to runaway even after receiving social services. While police department runaway statistics are just one indicator, the number of reported runaways in Anchorage certainly establish that the problem of runaway children continues to exist (see Runaway Statistics in Section III).

Several people have suggested that these statistics are not an accurate indicator because some parents do not contact the police becuase they feel the police have no real authority to help them get their child back into the home. The Anchorage Police Department requests that any parent contacting them about a runaway child should come down to the police station to fill out a runaway report.

Many issues that were not within the scope of this project need to be fully studied to determine the extent, nature and possible solutions to the juvenile runaway problem in Anchorage.

SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT
CHILDREN'S DIVISION

CHILDREN'S INTAKE OFFICE STATISTICS

	1978	1977	1976
Referrals to Court Intake	2,545	2,578	2,237
Total Offenses	2,778	** 2,497	* 2,242
Disposition of Referrals			
Letter Mailed to Parents	76	0	27
Conference with Child & Parents	1,656	1,619	1,398
Informal Probation	133	197	176
Referred to Probation Officer	246	209	158
Referred to Other Agencies	108	120	94
Delinquency Petition Filed	258	342	319
Probation Revocation Petition Filed	66	91	65
Total	2,543	2,578	2,237
Court Dispositions	***		
Waived to Adult Court		0	1
Probation	255	334	268
Institutionalized	29	51	46
Dismissed	1	1	2
Committed to State Mental Health	1	0	0
Types of Offenses			
Homicide	2	3	3
Assault with intent to commit Murder	1	0	0
Rape	1	2	1
Arson	1	1	0
Robbery	8	14	21
Assault with a deadly (dangerous) weapon	10	8	8
Assault and Battery	76	96	116
Grand Larceny	46	72	87
Burglary in a Dwelling	97	152	98
Subtotal	219	320	301
Burglary not in a Dwelling	24	96	54
Probation Violation	212	195	161
Larceny from the Person	7	3	0
Petty Larceny	939	709	589
Destruction of Property	183	148	149
Joyriding	127	130	111
Concealment of Merchandise	94	148	220
School Attendance			
Grade School	218	236	188
Junior High	586	534	504
High School	1,244	1,276	1,040
Not Attending	496	523	502

(Children's Intake Office Statistics continued)

	1978	1977	1976
Age:			
-12	166	152	121
12	157	190	161
13	350	265	238
14	375	419	374
15	503	527	446
16	513	502	452
17	471	515	445
18	4	8	0
Drug Violations	312	211	206
Liquor Violations	136	147	114
Curfew	76	36	32
Runaway		34	64
Beyond Parental Control		15	23
Situation Injurious to Minor			1
Truancy	2	47	14

* Includes CHINS Status Offenses
** Includes CHINS Status Offenses
*** 2 Waiver Hearings now on appeal

ANCHORAGE DIVISION OF SOCIAL SERVICES

CHILD IN NEED OF AID STATISTICS

	Intake Calls	Cases Discussed	Petitions Filed	New Cases	Basis for Petition							
					Runaway	Neglect	Abandonment	Refusing Avail.Care	No Caring Adult	Medical Neglect	Physical Abuse	Sexual Abuse
Oct 1977	178		10	77	2	2	6					
Nov 1977	148		5	56	1	3	1					
Dec 1977	161		7	63	3	0	4					
Jan 1978	252		3	74	0	0	3					
Feb 1978	197	14	9	76	1	3	5					
Mar 1978	237	13	14	69	0	12	2					
Apr 1978	239	18	12	67	1	10	1					
May 1978	216	13	9	67	2	4	3					
Jun 1978	557 *	13	8	69	4	2	2					
Jul 1978	478	6	3	83	0	1	2					
Aug 1978	589	16	10	68	3	5	2					
Sep 1978		Not Available										
Oct 1978	442	13	12	46	5	2	5					
Nov 1978	547	6	3	58	2	0	1					
					24	44	37					
Dec 1978	535	7	4	71					4	2	1	1
Jan 1979	592	18	14	91				6	11	1	2	2

*Began to include information and referral calls in this count.

ANCHORAGE POLICE DEPARTMENT

RUNAWAY STATISTICS
1976 thru 1978

MONTH	1976	1977	1978
January	42	31	21
February	45	41	27
March	60	25	24
April	45	39	38
May	53	29	29
June	37	26	35
July	35	26	45 (New areas incorporat
August	45	27	54
September	23	31	60
October	50	22	63
November	41	19	50
December	16	12	24
TOTAL	492	328	470

APPENDICES

A

Rule 6. Temporary Custody Without Court Order—Notification of Court and Interested Parties—Record of Notification to Be Made and Preserved.

(a) **When Temporary Custody May Be Assumed Without Court Order.** A child may be taken into temporary custody by any peace officer without an order of the court only when:

(1) A lawful arrest is made.

(2) The child violates a law or ordinance in the presence of the peace officer.

(3) The peace officer reasonably believes the child to be a fugitive from justice.

(4) The peace officer reasonably believes the child is evading the person having legal custody of him.

(5) The peace officer continues a lawful arrest made by a private citizen.

(b) **Notification of Court and Interested Parties.** A peace officer taking a child into custody under the provisions of this rule shall immediately notify the children's court, the parents, guardian, or custodian of the child and the Department of Health and Welfare, Division of Youth and Adult Authority, of the fact of such custody.

(c) **Record of Notification.** A written record of the names of the persons notified and the times of notification shall be made and preserved.

CROSS REFERENCES: AS 47.10.130; AS 47.10.140

Rule 7. Detention or Release Pending Hearing—Order Required — Inquiry — Release Pending Hearing — Detention — Power to Dismiss—Automatic Release.

(a) **Order Required for Detention or Placement.** Any detention or placement in a foster home or shelter pending proceedings under these rules and the statutes must be based upon a court order providing therefor and setting forth the grounds that support such detention or placement.

(b) **Detention Inquiry—Reasons for Detention or Placement.** No child shall be detained nor may any detention be continued prior to a first hearing of the case unless the court finds at a detention inquiry, which must be held not more than 48 hours after the child has been taken into custody, not excluding weekends and holidays, that:

(1) Detention is necessary to protect the child from others; or

(2) The child will not be available for subsequent court proceedings; or

(3) The child will cause harm to himself or to others if he is not detained.

(c) **Subject Matter of Detention Inquiry Limited.** The subject matter of a detention inquiry shall be limited solely to the legality of the detention or of the continued detention of the child. The testimony of the child or others on the merits of the petition for adjudication or on therapeutic proposals shall not be heard in connection with the subject matter of the detention inquiry.

(d) **Release from Custody Pending Hearing.** If after a detention inquiry no reason appears to warrant continued detention under (b) of this rule the child shall be released to the person having lawful custody or to a responsible person, organization, or agency approved by the court in its order, upon the written promise of the person, agent, or representative of the organization or agency to produce the child before the court at a time specified by the court.

(e) **Detention—Placement—Shelter Facilities.** Where the child is not released as provided in (d) of this rule, he shall be taken without unnecessary delay to a place of detention, foster home, or shelter designated by the court in its order. Any child taken into custody who requires care away from his home but who does not require restrictive detention shall be given temporary care in a foster home or other shelter facility designated by the court in its order.

(f) **Power to Dismiss Always Exists.** The children's court is not precluded from dismissing a child matter at this or any other stage of the proceedings if the interests of justice and the welfare of the child dictate such action.

(g) **Automatic Termination of Detention After 30 Days.** Where a child has been detained for a period of 30 days, such detention shall automatically be terminated and the child shall be released forthwith unless at or prior to the expiration of such period the court has made written findings supporting an order for continued detention. The findings shall state the reasons for delaying final adjudication or disposition of the child matter. These findings and the order provided for herein shall be forwarded to the presiding judge of the superior court not later than five days after entry for review and approval.

(general) CROSS REFERENCES: AS 47.10.010; AS 47.10.140
(a) CROSS REFERENCE: Children's Form 4
(d) CROSS REFERENCE: Children's Form 5
(g) CROSS REFERENCE: Children's Form 6

STATE OF ALASKA
DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF CORRECTIONS
McLAUGHLIN YOUTH CENTER

JAY S. HAMMOND, GOVERNOR

2600 PROVIDENCE AVENUE
ANCHORAGE 99504

B

January 11, 1979

Alan Kuntze
Legal Researcher
Alaska Youth Advocates, Inc.
835 D Street, Suite 105
Anchorage, Alaska 99501

Dear Mr. Kuntze:

In response to your letter requesting statistical information regarding detained residents at the Center, the following information answers your questions in the same sequence as requested:

1. Attached is a list of the number of youths detained from 1 to 48 hours at McLaughlin who are released without being arraigned in court.

2. The temporarily detained youth are released by signed Release Authorizations issued by the Trial Court Intake Officer.

3. Time:
    Less than 12 hours - 14%
    Less than 24 hours - 23%
    Greater than 24 hours - 62%

    Grounds:

    Assault - 8%   CCW - 2%   Shoplifting - 19%   Trespassing - 5%

    Dist. of Property - 2%   Drugs - 11%   Alcohol - 1%   BIAD - 7%

    BNIAD - 1%   Larceny - 14%   Rec. & Concealing - 2%   Dis. Conduct - 9%

    Joyriding - 6%   Curfew - 8%   Miscellaneous - 5%

4. The approximate daily cost to house and feed a youth in detention at McLaughlin is $78.23.

5. The monthly breakdown of youths held in detention from 11/30/77 to 11/30/78 is as follows:

DECEMBER 1977

	GIRLS		BOYS
A.	0		0
B.	0		0
C.	4	16	12
D.	3	14	11
	7		23

JANUARY 1978

	GIRLS		BOYS
A.	4		4
B.	0		0
C.	3	[illegible]	7
D.	4	[illegible]	22
	[illegible]		[illegible]

FEBRUARY 1978

	GIRLS		BOYS
A.	0		1
B.	0		0
C.	0	13	13
D.	4	[illegible]	17
	[illegible]		[illegible]

MARCH 1978

	GIRLS		BOYS
A.	1		1
B.	0		2
C.	1	14	13
D.	4	20	16
	[illegible]		[illegible]

APRIL 1978

	GIRLS		BOYS
A.	0		2
B.	0		1
C.	1	16	15
D.	4	20	16
	[illegible]		[illegible]

MAY 1978

	GIRLS		BOYS
A.	1		0
B.	1		1
C.	1	19	18
D.	3	31	28
	[illegible]		[illegible]

JUNE 1978

	GIRLS		BOYS
A.	0		3
B.	1		1
C.	4	19	15
D.	5	[illegible]	26
	[illegible]		[illegible]

JULY 1978

	GIRLS		BOYS
A.	1		1
B.	0		0
C.	1	[illegible]	15
D.	3	17	14
	5		[illegible]

AUGUST 1978

	GIRLS		BOYS
A.	0		0
B.	0		0
C.	2	[illegible]	16
D.	5	23	18
	7		34

SEPTEMBER 1978

	GIRLS		BOYS
A.	0		0
B.	0		0
C.	3	9	6
D.	6	[illegible]	19
	[illegible]		[illegible]

OCTOBER 1978

	GIRLS		BOYS
A.	1		4
B.	0		1
C.	2	[illegible]	6
D.	1	20	19

NOVEMBER 1978

	GIRLS		BOYS
A.	0		3
B.	0		0
C.	1	7	6
D.	2	21	19
	3		[illegible]

A = Pending Adjudication
B = Pending Classification
C = Pending Program Placement
D = Temporarily Detained

If you have any questions regarding this material, please do not hesitate to contact me.

Sincerely,

David E. Arnold
Superintendent
McLaughlin Youth Center

DEA/rst

Attachments: Statistical List of Youth Detained From 1 to 48 Hours

DETENTION and ADMISSION

NAME:	AGE:	DOB:	POB:
RESIDENCE ADDRESS:	SEX:	RACE:	COMPLEXION:
	HT:	WEARS GLASSES? ☐ YES, ☐ NO.	BUILD:
PHONE No. HOME: WORK:	WT:	MARITAL STATUS: ☐ NEVER MARRIED, ☐ MARRIED, ☐ SEPARATED, ☐ DIVORCED, ☐ WIDOWED.	
EMPLOYER/SCHOOL:	EYES:	IDENTIFIABLE MARKS:	
	HAIR:		

	FATHER	MOTHER	GUARDIAN or OTHER
NAME:			
RESIDENCE ADDRESS:			
EMPLOYER & ADDRESS:			
PHONE No.	HOME: WORK:	HOME: WORK:	HOME: WORK:
NOTIFIED?	☐ YES, ☐ NO. TIME:	☐ YES, ☐ NO. TIME:	☐ YES, ☐ NO. TIME:

REMARKS:

PRIOR DET. & ADMIT:
☐ YES. ☐ NO.

PRIOR PROG. & ADMIT:
☐ YES, ☐ NO.

MONIES:
☐ YES, ☐ NO.

ELIGIBLE ANS HOSPITAL:
☐ YES, ☐ NO.

ON SOCIAL SECURITY:
☐ YES, ☐ NO.

VALUABLES:
☐ YES, ☐ NO.

CURRENT RESPONSIBILITY:
☐ DOC.
☐ DPW.
☐ OTHER:

ADMITTING OFFICER'S SIGNATURE
X

INSTITUTION:

PURSUANT TO THE REQUIREMENTS OF A.S. 47.10.100, A.S. 47.10.130, AND A.S. 47.10.140, THE ABOVE NAMED INSTITUTION IS HEREBY REQUESTED TO DETAIN THE ABOVE NAMED MINOR FOR THE REASON NOTED BELOW, AND TO CAUSE SAID MINOR TO BE BROUGHT BEFORE A COURT OF COMPETENT JURISDICTION WITHIN 48 HOURS.

REASON FOR DETENTION (RULE 7):
☐ PROTECTIVE CUSTODY
☐ ASSURE COURT APPEARANCE
☐ PROTECT PUBLIC

OFFENSE & COMMENTS:

COMMITTING OFFICER'S SIGNATURE
X

AGENCY:

DATE & TIME:

BADGE No.

DISTRIBUTION: White – A&D Office Yellow – Intake Office Pink: Arresting Officer

C Page 1 D

ALASKA DIVISION OF CORRECTIONS
DAILY JUVENILE PLACEMENT POPULATION FOR 1978
SEPTEMBER AVG.S

FOSTER PLACEMENTS	# OF HOMES	# OF SPACES	MALE	FEMALE	TOTAL IN PLACEMENT
Region SERO	3.0	5.0	3.4	1.0	4.4
Region SCRO	21.3	39.7	13.0	6.2	19.2
Region NRO	5.0	7.0	4.0	0	4.0
STATEWIDE TOTALS	29.3	51.7	20.4	7.2	27.6

IN-STATE PRIVATE CARE FACILITIES	MALE				FEMALE				TOTAL
	SERO	SCRO	NRO	SUB-TOTAL	SERO	SCRO	NRO	SUB-TOTAL	
Alaska Children's Services		5.3	4.0						9.3
Bethel Receiving Home									
Bethel Volunteer Group Home			2.3						2.3
Booth Memorial Home						5.7			5.7
Hilltop Home		15.2							15.2
Juneau Receiving Home	1.7								1.7
Juneau Teen Home	2.0								2.0
Kenai Care Center		1.0							1.0
Ketchikan Receiving Home									
Ketchikan Teen Home									
Kodiak Baptist Mission		1.0							1.0
Nome Receiving Home									
Presbyterian Hospitality House							1.0		1.0
Turning Point Boys' Ranch	4.3	7.0	12.3						24.1
Youth Advocates of Sitka, Inc.									
Other			3.0						3.0
STATEWIDE TOTALS	8.0	29.5	22.1	59.6		5.7	1.0	6.7	66.3

[illegible] PLACEMENT REPORT [illegible] December [illegible] 78 Page 2

IN-STATE DETENTION FACILITIES	MALE DETENTION	MALE DETENTION PENDING PRG	MALE CTU	MALE PROGRAM	SUB TOTAL	FEMALE DETENTION	FEMALE DETENTION PENDING PRG	FEMALE CTU	FEMALE PROGRAM	SUB TOTAL	TOTAL
*McLaughlin Youth Center	31.0	8.0	11.9	58.6	109.5	8.8	1.3	2.3	10.1	22.4	13[illegible]
SCC/Ketchikan	3.8				3.8	0.5				0.5	4[illegible]
SCC/Juneau	1.7				1.7	0.4				0.4	[illegible]
SCC/Fairbanks	0.1				0.1	1.8				1.8	1[illegible]
SCC/Nome	-0-				-0-	-0-				-0-	-0-
STATEWIDE SUB TOTALS					115.1					[illegible]5.1	14[illegible]
-of-State Locked Facilities	SERO	SCRO	NRO			SERO	SCRO	NRO			
Colorado Youth Authority	4.8	2.0	1.0			1.0					
SUB TOTAL											9.8
-of-State Private Care Facilities	SERO	SCRO	NRO			SERO	SCRO	NRO			
Excelsior											
Devereaux - Texas		1.0				5.0	2.3	2.4			9.7
Devereaux - California											1.0
Jemm School			1.0					1.0			2.0
Provo Canyon School	6.8	3.8	1.0								11.6
St. Mary's	1.1										1.1
Sky Ranch	4.0		1.0								5.0
Elan One											
Emily Griffith			2.0								2.0
Albertina Kerr											
Other											
SUB TOTAL	11.9	4.8	5.0			5.0	2.3	3.4			32.4

DIVISION OF SOCIAL SERVICES
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

JUVENILE PLACEMENTS
FY 76-77-78

(Daily Average by Month)

	FY	July	August	September	October	November	December	January	February	March	April	May	June	Cost
Brown Schools	76													
	77													
	78	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.90	2.00	
Devereux Foundation	76													
	77													
	78	6.13	7.00	7.00	6.42	6.00	6.00	5.10	5.00	5.00	5.00	5.00	3.47	
Excelsior	76													
	77													
	78	8.90	10.19	11.90	14.84	15.00	15.84	17.29	20.96	20.84	22.00	22.13	23.60	
St. Mary's Home for Boys	76													
	77													
	78	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.27	
Secret Harbor	76													
	77													
	78	3.00	3.00	3.00	3.00	4.00	4.00	4.00	4.00	4.00	3.60	3.00	2.63	

Department of Health & Social Services
Division of Corrections
Juvenile Confinement
Out-of-State Facilities
4th Quarter FY 78

Private Institutions	Rate (Monthly)	Total	April Juveniles	April Days	April Expend.	May Juveniles	May Days	May Expend.	June Juveniles	June Days	June Expend
The Brown Schools Austin, Texas	$ 1800.00	$ 7,379.95	1	30	$ 2,032.76	1	23	$ 2,317.19	1	30	$1,800.0
Devereux Foundation Devon, Pennsylvania	1395.00	-0-	0	0	-0-	0	0	-0-	0	0	-0-
Division of Youth Services Denver, Colorado	1065.00	28,618.85	9	250	8,875.00	9	279	9,904.50	9	262	9,8[illegible]
Excelsior Youth Center Denver, Colorado	1485.00	54,345.03	16	407	20,017.94	14	428	18,379.80	12	339	15,947.3
Provo Canyon School Provo, Utah	1300.00	20,769.48	4	117	5,452.98	6	133	6,284.68	7	102	9,031.8
Secret Harbor Farms, Inc. Anacortes, Washington	1650.00	-0-	0	0	-0-	0	0	-0-	0	0	-0-
Sky Ranch for Boys, Inc. Sturgis, South Dakota	630.00	13,101.00	7	184	3,864.00	7	176	5,360.00	6	180	3,880.0
St. Mary's Boys Home Beaverton, Oregon	1650.00	4,950.00	1	30	1,650.00	1	31	1,650.00	1	30	1,650.0
Total		129,167.37	38	1,018	42,852.68	38	1,070	44,146.15	36	1,033	42,18[illegible]

Revised 7-1-76

E

COURT REPORT FORMAT - INITIAL

CHILDREN'S COURT REPORT
DIVISION OF CORRECTIONS
FOR: SUPERIOR COURT, CHILDREN'S MATTERS
COURT DATE:

RE:
DOB:

PETITION #: CP

ADJUDICATION:

In this section briefly indicate the offense in the Petition - time, date, and delinquent act - and the applicable Alaska Statute. It is unnecessary to include all the legal language, i.e. "Third Judicial District", "did then and there unlawfully and feloniously", etc.

Include date of the adjudication, name of attorney, and child's plea. If a trial, so indicate. Specify declaration, i.e. Delinquent, Child In Need Of Supervision.

RESIDENCE OF MINOR:

Indicate where the child is living at the time of disposition and with whom, as well as his usual residence if it is different. If detained, indicate where and for how long.

PRIOR DIFFICULTY:

Brief account of police contacts including arrests and dispositions. Do not include dismissals.

PRESENT DIFFICULTY:

This section is used to paraphrase the official report. Normally this will be a police report, but it might be the parent's statement of difficulty if the offense is incorrigibility or runaway. Include source of official report. Simply saying "Refer to police report" is not sufficient. Keep it short. Copies of significant parts of the actual police report are provided as attachments.

RESTITUTION:

Include this section on all reports where the offense is of a nature that damage or loss may have resulted. If none, so indicate. If the victim suffered a loss, verify amount and include along with victim's name, address, and insurance company if appropriate. If there are co-defendants who have

RESTITUTION: Continued

been Petitioned for the same incident, indicate how many. This section is for factual information about the victim's loss only and should not include your recommendation concerning restitution.

MINOR'S STATEMENT:

This shall include, but is not limited to, the following information:

Minor's account of the offense.

Minor's interpretation of his problem (Does he see a problem?)

Minor's interpretation of his family and peer relationships.

Minor's plan for himself.

PERSONAL AND FAMILY HISTORY:

Begin section with factual statement about minor; age, place of birth, race, nationality, brief developmental history, and legal custody. Then briefly describe family constellation, including marital status and information about the parents, age and sex of siblings, and general whereabouts of each family member. Follow with a statement describing the family residence.

The remainder of this section will fall under several definite sub-sections.

FATHER:

MOTHER:

STEP-FATHER: (if applicable)

STEP-MOTHER: (if applicable)

GUARDIAN: (if applicable)

Begin each sub-section with a factual statement about the person, including age, race, nationality (if meaningful) occupational history, and present employer, marital history, etc. Do not include other factual details unless they have meaningful impact on the family and the minor.

The remainder of each sub-section is devoted to the person's account of the child's problem, their attitude about the child's behavior, the family relationship, and their conception of a plan.

PERSONAL AND FAMILY HISTORY: Continued

Other sub-sections may be added when applicable.

SIBLINGS:

This section is used to briefly describe the minor's relationship with his brothers and sisters in more detail when their impact on each other's behavior is significant.

Another sub-section to aid the officer in organizing the material might be "Previous Placements".

FAMILY FINANCIAL STATUS:

Include income of family members responsible for the minor's support. Specify net or gross source of income, including support payments, significant assets (property, bonds, etc.), and debts.

If family and/or child is covered by comprehensive medical insurance, so indicate, with company name and policy number. Note eligibility for ANS if appropriate. Also indicate eligibility and/or receipt of Social Security, Welfare benefits, unemployment compensation, etc.

HEALTH HISTORY:

This section is intended to be a narrative describing the minor's general health and handicaps. Remember you are not a doctor, so don't diagnose. Only report what you can see, document, or have had reported by a reliable family source. Only include health history which has current or future ramifications.

In this section also include mental health information such as brief statements from psychological or psychiatric reports that will be important to your evaluation and recommendation. The dates of such reports along with who prepared them is a must. Be sure quotations are not misleading apart from the full report. Attach full psychological or psychiatric report to the Court report.

HOBBIES AND INTERESTS:

In this section describe the minor's activities, desires, aptitudes, and recognitions appropriate to the heading.

EDUCATION AND EMPLOYMENT:

This section should include account of previous and present school adjustment; both social and academic. List grades, name of school attending, and source of your information. Also include child's attitude and aspirations.

Indicate past and present employers, minor's duties, income and work hours if applicable.

SUMMARY AND EVALUATION:

In this section briefly mention the most important facts of the investigation and give your interpretation of the meaning of those facts.

Outline the minor's assets and liabilities.

Briefly describe appropriate treatment approach(s) without stating recommendation. No new information other than your analysis should appear in this section. Any facts of such importance that they were used in formulation of your evaluation and/or recommendation must be included elsewhere in the body of the report.

RECOMMENDATION:

Be sure your recommendation is realistic. Normally, one of the following standard options will suffice. Additional points may be added to any example when appropriate.

F

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS
JUVENILE PROBATION OFFICE

JAY S. HAMMOND, GOVERNOR
Juvenile Probation Office
329 Barrow Street
Anchorage, AK 99501

PHONE: 279-0516

Dear

An investigation is currently being conducted regarding the minor(s) involved in the theft or destruction of your property on

In order for us to provide the Court with sufficient information to consider an order for Restitution, it is necessary that we have the following notarized documentation:

1. A list of all items recovered or being held in evidence by the police or troopers:
2. A list of all not recovered, including full description, value, and the basis used to determine value;
3. A list of items damaged, including value, method of determining value, amount of damage, and method of determining that amount; (repair estimates, etc.)
4. If you have an insurance policy which has covered or may cover the loss; the name and address of your agent and insurance company and the policy number.

Please submit the above documentation in a notarized statement with all appropriate attachments to ouf office prior to

Sincerely,

Probation Officer

IN THE TRIAL COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

G

In the Matter of:)
)
)
________________________________)
A minor under the age of 18 years.

Case No. CP________

FINDINGS AND JUDGMENT

FINDINGS

This matter came on regularly for disposition hearing on the _____ day of ______________, 19___, before ________________________________ of the Superior Court.

Persons present:

The Court has previously ordered an investigation of the minor's family and environment, and a report has been filed herein containing recommendations as to the minor's disposition. The Court has read the report, and having heard and considered the evidence and recommendations of the probation officer and being fully advised in the matter, finds that the Court has jurisdiction of the minor and the subject matter of the proceedings. The Court has previously adjudicated the minor a delinquent, and has concluded that the minor should be placed in the custody of the Department of Health and Social Services for an indeterminate period of time not to exceed two years or the minor's nineteenth birthday. The Court further finds that unless the minor is placed in an institution, the anti-social conduct of the minor will continue to occur, to the injury of the minor or others, and that treatment, correction, and rehabilitation cannot otherwise be achieved.

JUDGMENT

IT IS ORDERED that the said minor be and hereby is committed to the Department of Health and Social Services for an indeterminate period not to extend beyond two years from the effective date of this Order or the minor's nineteenth birthday, unless the Department, as provided in A.S. 47.10.080(b)(1), petitions for continuation of custody for additional two year periods or until the minor's twentieth birthday.

IT IS FURTHER ORDERED that said minor be placed by the Department in a correctional or detention facility as defined in A.S. 47.10.080(b)(1), to be held there until released, upon a showing by an officer of the Department of Health and Social Services that the minor has completed a program of rehabilitation and has been amenable thereto, and that the Court be advised in writing that such release is contemplated. The commencement of the term of placement in the correctional or detention facility shall, to make available to the minor a maximum opportunity for self-correction, be deferred for a conditional period not to extend beyond the ____day of ____________, 19___, unless commencement is further deferred, or institutional placement is suspended as hereinafter provided.

IT IS FURTHER ORDERED that during the period of deferment the minor shall be placed in a suitable home, which may be that of the parents, and shall while in said home be subject to written conditions controlling behavior and providing for good conduct, and that if, at any time prior to the ____day of ________________, 19___, it is brought to the attention of

This form to be used ONLY where institutional placement is deferred.

the Court that the minor has violated the conditions of deferment, the period of deferment may be terminated and immediate commencement of the institutional term may be ordered. Should the minor abide by the conditions of deferment, and a memorandum signed by a Probation Officer, or other qualified person, be filed with the Court showing that the minor has faithfully kept the conditions of deferment and has conformed to the house rules of parents and other persons having supervision, including school officials, if the minor is in school, and has made restitution if ordered, placement in a correctional or detention facility may be further deferred or suspended altogether.

IT IS FURTHER ORDERED that during any period that said minor is residing under this judgment in a correctional or detention facility, the Department of Health and Social Services is authorized to furnish medical and dental treatment as deemed necessary for the minor, and may permit the minor to be photographed for identification purposes.

IT IS FURTHER ORDERED that the parents of said minor contribute $_________ per month for the support of said minor during the period of residence in a correctional or detention facility, or in a foster home placement, payable to the State of Alaska through the office of the Child Support Enforcement Agency.

*

**

IT IS FURTHER ORDERED that said minor, during the period of custody in the Department of Health and Social Services, shall be subject to such written conditions of probation or deferment as appear on a separate document filed herein, but that such conditions of probation or deferment shall not be in effect during any period of time when the minor is detained in or is in institutional placement at a facility within the purview of A. S. 47.10.080(b)(1).

DONE at _____________, Alaska this ____ day of ___________, 19___.
Order effective ___________________, 19___.

____
JUDGE OF THE SUPERIOR COURT

Recommended for approval
this ____ day of _______________, 19___.

____
Master for the Superior Court

This form to be used ONLY where institutional placement is deferred.

* Restitution provision if ordered
** Special conditions of deferment

H

TELL IT TO... Bud

SOME JUVENILE CASES GO TO ADULT COURT

Dear Bud:

Our 12-year-old son and his buddy were recently cited by a state employee for illegally fishing at Campbell Creek. They were unaware of the restriction as no signs were posted. They appeared in adult court and were given six months probation. In a day or two, the names were published in the Police Blotter section of the Times.

I have two questions:

— Why is it that a 12-year-old must be exposed to adult court where such cases as rape, prostitution, robbery, etc. are heard?

— Why were the names of the 12-year-olds published when other juvenile crimes are published, but no names given? These are crimes such as destruction to our schools, shoplifters, car thefts and murder.

Jean Doran

Dear Jean:

Your son's case came under the jurisdiction of the adult court because of an amendment passed by the legislature in 1977. Before that time only juveniles who committed minor traffic violations were tried in adult court. The legislature changed the law to include also misdemeanor fish and game and parks and recreational facilities violations as well.

Part of the rationale behind the decision, according to James E. Arnold, area court administrator, was that punishment in adult court would be more effective and appropriate for violators who commit these offenses. It was felt by the legislative task force that assessment of fines, for example, would be more effective than placement on juvenile probation, the most likely result of a misdemeanor-type first offense in juvenile court.

Arnold said, "It may be implicit in this approach as well that the concepts of treatment and rehabilitation, which are at the heart of the juvenile justice system, may be less likely to apply to minors committing these offenses than to other property-related crimes."

You have asked why your son's name was published. It appeared in the Vital Statistics section of the paper. The Times is provided that information by the courts. For a name to appear on that list it first must be released by the judge. We print the list we receive in entirety, with no exceptions or deletions.

Bud

DEPARTMENT OF HEALTH & SOCIAL SERVICES
DIVISION OF CORRECTIONS
MCLAUGHLIN YOUTH CENTER

A&D - 8
April 22, 1977

I

COURT ANNUAL REVIEW
POLICY & PROCEDURE

I. PURPOSE:

The purpose of this policy is to outline the procedure and basis for implementing Annual Reviews for the Court as prescribed in AS 47.10.080.

II. RESPONSIBILITY:

It shall be the responsibility of the Program Admissions & Discharge Officer under the supervision of the Special Services Officer to implement this procedure.

III. PROCEDURE:

After a child has been institutionalized by the Court and entered the McLaughlin Youth Center program, an Annual Review is required by State law a year from the date of the Disposition Hearing. In the case of a Review Hearing being held sometime during the interim, the Annual Review will be advanced to one year after the Review Hearing. This review is a summary of the case and gives a report of the child's progress while at McLaughlin. To insure this is done promptly, the following procedure is to be used.

A. When a child is admitted to the program, a card shall be prepared giving the child's name, Children Proceedings Number, the date of the Disposition Hearing, and a date eleven months later.

B. The card will be kept in a file by dates. A monthly review of the card file will indicate one month in advance of the due date of the Annual Review.

C. The Annual Review shall be prepared on legal size paper and divided into the following categories (see attached):

  1. Heading shall include name of child, date of birth, and CP number.

(cont.)

SUPERSEDES Policy & Procedure A&D-9, dated September, 1973.

COURT ANNUAL REVIEW
POLICY & PROCEDURE
(page 2)

2. Whereabouts of Minor. This shall include date admitted into the program and where child normally resides.

3. Reason for Hearing. Indicate this is an Annual Review and include date of Disposition Hearing.

4. Financial Responsibility. This indicates the amount of money ordered by the Court for support of child while in custody. Also included, mention of any restitution that may have been ordered.

5. Evaluation of Progress in Custody. Give a summary of the child's progress in the program, plans for release and any pertinent information necessary.

6. Recommendation. Self-explanatory, depending on progress.

7. It is to be signed by the counselor preparing the report and approved by the Clinical Services Administrator.

D. This report is to be prepared and submitted 15 days prior to the annual date to the presiding Judge of the appropriate Judicial District. In the Third Judicial District, it shall be directed specifically to the Family Court Judge. A copy shall be placed in the child's master file, one given to the Clinical Services Secretary for her records, and a copy to the appropriate Cottage in which the resident is located.

David/E. Arnold, Superintendent

TJD/clb

J

CHILDREN'S COURT REPORT - ANNUAL REVIEW
DIVISION OF CORRECTIONS
FOR: SUPERIOR COURT, CHILDREN'S MATTERS
DATE:

RE:
DOB:

PETITION # CP

REASON FOR HEARING:

As required by AS 47.10.080, the following information is provided concerning the minor who was declared a (CHINS or delinq. minor) and whose custody order was last reviewed or modified on ______________.

RESIDENCE OF MINOR:

NAME AND RESIDENCE OF PARENT(S) OR GUARDIAN(S):

PROGRESS IN CUSTODY:

RESTITUTION:

EVALUATION AND PLAN:

RECOMMENDATION:

It is therefore respectfully recommended that Finding and Judgment CP

#_____ remain in full force and effect

Respectfully submitted

Probation Officer

EDWARD B. COLEMAN
REGIONAL ADMINISTRATOR

RICHARD F. ILLIAS
PROBATION-PAROLE SUPERVISOR

XX:XXX:xx
date

STATE
DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

JAY S. HAMMOND, GOVERNOR

Anchorage Service Unit
527 E. Fourth Avenue
Anchorage, AK 99501
(907) 279-1615

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492 - 1976 APO [illegible]

11/17/77

SERVICES TO RUNAWAYS

The Division of Social Services is faced with several barriers in providing adequate services when an adolescent child is:

1) "Habitually absent from his home"
2) Refusing to accept available care from his parents and/or the agency
3) Being refused care by his parents

The most overwhelming barrier is the lack of resources in this community for the adolescent child who needs placement away from his parents. Our Division has three placement resources:

ACS Group Homes - 30 or 90 days (maximum stay)
Family Connection foster homes - 7 day (maximum stay)
DSS foster homes - 31 homes for adolescents

Since none of these resources are equipped to provide a theraputic containment program for a child, we cannot be very effective with many of the children who are in need of aid. In addition to the lack of this type of resource, the programs that are available offer limited time and/or space which makes it difficult to actually implement the best plan for any child and his family.

Because of the realities of limited resources our agency assesses adolescent runaway situations by using the following criteria:

1) Is the child in imminent danger from his parents? Is there any documentation?
2) Is the child in imminent danger from the environment he has selected if he is out of his own home? Is there any documentation?
3) Is the child available to receive services?
4) Are the parents and the child interested in receiving services?
5) What type of resources does the total family need? Are those resources available?
6) How many times has the child run? When did this problem start?

Based on the answers to these questions our agency takes one of the following actions:

1) If the child is in danger from his environment and this can be documented we petition for custody.
2) If the child is not available and the parents are concerned, we refer the parents for counseling and advise them to file a missing person's report.
3) If the child is not in danger and the child and parents are available we refer the family to Alaska Youth Advocates, Family Connection or to other community counseling resources.
4) We do not place a child out of their own home if there is no physical danger to the child in their home.

   If a removal is indicated because of the seriousness of the emotional stresses we try to refer to Family Connection and/or ACS. If these programs cannot provide the needed services we try our agency foster home program. If there are no resources for placement we leave the responsibility of the child with the parents and encourage the family to seek counseling.

5) If the information indicates that the child will not stay in a placement and there is no imminent danger involved, there is very little we can do. We once again encourage the parents and the child to seek counseling.
6) When the parent is refusing to be responsible for the child, we make every effort to re-involve them in caring for their child.

What is overlooked too frequently within our community is that placement out of the home is rarely the appropriate solution for families with adolescents in crisis.

It is not just the lack of placement resources that makes it difficult for our agency to provide services but also the fact that many families come to us already committed to the idea that placement is the solution. Teenage problems are very complex. Placement out of the home may relieve the immediate pain and stress in the family; however, placement out of the home is often only an "easy out" for parents and children sometimes resulting in further polarization of the family members with no hope for future reunification. The problems are not resolved by placement then parents and children end up with only a sense of failure.

Because of the lack of resources and more importantly because placement is rarely the solution for a family, our agency is resistant and reluctant to pursue custody and placement of "runaway" adolescents.

L

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of:)
)
)
A Minor Under the Age of)
Eighteen (18) Years.)
Date of Birth:)
______________________________)

No.____________________ CP

AGREEMENT BETWEEN PARENTS OR GUARDIAN AND THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES FOR VOLUNTARY PLACEMENT OF MINOR (AS 47.10.230(c))

I, ______________________, and I, ____________________,

parents/guardian of ____________________, a minor, agree to the following in requesting the Department of Health and Social Services to provide care for the minor named above.

1. To accept the supervision of the Department of Health and Social Services, through its representative (or agency designated or approved by the Department) in all matters pertaining to the care of the minor named above.

2. To share with the agency responsibilities in planning for the care of the child mentioned above, insofar as I am able and when unable to permit the supervisory agency to carry out plans best suited in its judgment to the needs of the child.

3. To consent and to approve any medical or surgical treatment, including anaesthesia, necessary for the child. It is understood that the parents or guardians have the right to have the child examined by a physician of their own choice.

4. To allow emergency medical services to be rendered to the child at the discretion of the supervising agency upon the recommendation of a practicing physician. If medical care is not of an emergency nature, the undersigned will be advised of the type of care needed in advance and his or her consent for that specific care secured.

5. To visit the child only in accordance with terms approved by the supervision agency. The time and place of visits will be agreed upon by the parents or guardian, foster parents, and the supervising agency.

6. To notify the supervising agency of any change of address, or changes in the circumstances of my family which might necessitate modification of any terms agreed upon herein.

7. To refer all complaints to the supervising agency.

8. To consult with the supervising agency in the event of any possible change in placement.

9. To abide by the following additional provisions:

10. Services are to commence on ____________________, 19____,

and will terminate on ___________________, 19____, a period of not more than six (6) months, unless the voluntary placement is renewed.

I also state herein that I am the legal custodian of the above-named minor. I understand that if another comes forward with evidence of a right to custody of the minor greater than or equal to my own, the Department will attempt to contact the undersigned prior to relinquishing the minor to said person(s).

I understand that this agreement is voluntary and that I have the right to regain care of the minor named above at any time. In the event that I decide to regain care of the minor prior to the agreed termination date, I will give the Department at least twelve (12) hours notice of said decision.

I have read (or have had read to me) and understand the above statements, and I agree to carry out their provisions.

_______________________ DATE

_______________________ Parent or Guardian

_______________________ DATE

_______________________ Parent

_______________________ DATE

ALASKA DEPARTMENT OF HEALTH &
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

BY: _______________________
Social Worker

APPROVED:

____
Supervisor

JV1

WORKSHEET -- CHILD IN NEED OF AID

BY:____________________ DATE:____________________

Request for legal proceedings to be commenced on CHILD IN NEED OF AID.

1. a. Name of Child:____________________ b. Date of Birth:__________

c. Age:__________ d. Sex:__________

e. Address of residence:____________________

f. Name of child's guardian/custodian if not a parent:____________________

2. Name of Mother:____________________

Address of residence:____________________

Name of Father:____________________

Address of residence:____________________

3. a. Emergency custody taken on:__________ (Date) __________ (Hour)

b. Notification of parent, guardian, or custodian on:

__________ (Date) __________ (Hour)

c. Parent, guardian, or custodian not notified because:____________________

____

____

d. ☐ Minor has been abandoned.

☐ Minor has been grossly neglected by his parent or guardian (failure to provide necessary food, care, clothing, shelter, or medical attention) so that his immediate removal from his surroundings is necessary to protect his life.

☐ Minor has been abused (infliction, by other than accidental means, of physical harm upon the body of a child).

☐ Minor has left home and is evading the person having legal custody of him.

e. Summary of facts which justify emergency custody:____________________

____

____

____

f. Names of witnesses to facts upon which emergency custody taken:

____

____

____

4. a. Minor is a child in need of aid because:

☐ Minor is habitually absent from his home; or refuses to accept available care; or has no parent, guardian, custodian, or relatives caring or willing to care for him.

☐ Minor is in need of medical treatment to cure, alleviate, or prevent his suffering substantial physical harm or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward others, and his parents are unwilling to provide the medical treatment.

☐ Minor has suffered substantial physical harm or there is an imminent and substantial risk that the minor will suffer such harm as a result of the actions done or by conditions created by his parent, guardian, or custodian, or the failure of his parent, guardian, or custodian to adequately supervise him.

☐ Minor has been sexually abused either by his parent, guardian, or custodian, or as a result of conditions created by his parent, guardian, or custodian, or by the failure of his parent, guardian, or custodian to adequately supervise him.

☐ Minor has committed delinquent acts as a result of pressure, guidance, or approval from his parents, guardian, or custodian.

b. Summary of facts upon which minor is a child in need of aid:

c. Names of witness to facts upon which minor is a child in need of aid:

d. Documentary evidence that child needs aid: (Attach)

5. Summary of prior contacts with minor of family:

6. Description of aid to be provided minor and/or treatment plan for family:

7. Other action requested or relevant information:

(REV. 02-15-78/ds)

N

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of:)
)
)
)
A Minor Under the Age of)
Eighteen (18) Years.)
Date of Birth:)

No. ________________ CP

DIVISION OF SOCIAL SERVICES
REPORT FOR ANNUAL REVIEW OF CHILD IN NEED OF AID

Child's Name:

Birthdate:

Present Address:

Father's Name and Address:

Mother's Name and Address:

SS Case No.:

Date and Place of Present Commitment:

Date Present Committment Expires:

As required under AS 47.10.080(f) and 47.10.083, the following information is submitted regarding the above child who is in the care and custody of the Division of Social Services.

1) BASIS UPON WHICH CHILD WAS ADJUDICATED CHILD IN NEED OF AID:

2) REASONS FOR REMOVING CHILD FROM HOME:

3) SERVICES OFFERED TO PARENTS TO FACILITATE REUNION:

4) SERVICES UTILIZED BY PARENTS TO FACILITATE REUNION:

5) VISITATION HISTORY BETWEEN PARENT AND CHILD:

6) CHILD'S PROGRESS WHILE IN CUSTODY:

7) CURRENT PLANS FOR CHILD AND PARENTS, INCLUDING ADDITIONAL SERVICES NEEDED TO FACILITATE CHILD'S RETURN TO PARENTS:

8) EXPECTED DATE OF RETURN OF CHILD TO PARENTS:

9) RECOMMENDATIONS:

DATE: ____________________

By: ____________________
Social Worker,

DIVISION OF SOCIAL SERVICES
DEPARTMENT OF HEALTH AND SOCIAL SERVICES